

Do Prob. Teste. n. 14. Prosp. Garin. do Est. b. Quest. 53 n. 52. But such a witness may be admitted, if he equally had both parties in trial. *Idem* Prosp. Garin. *ibid.* n. 66. And one of two persons under Mutual Law borrow was received witness against the other, the former pursuing himself by oath of any one, lies against the latter. 8 Novemb. 1711 Montfong contra Sharp of Woodman. It was also decided by the Lords of the Treasury 11 Novemb. 1672 Robert Barnage of Henegate's Plea of Law borrow being used only as a legal Remedy to defend against oppression the the Plaintiff with Law borrow might fear Oppression from the person charged, it doth not follow that he hates him. Therefore if he, when produced a witness pursue himself, it is supposed that he would conform to the Gospel that of doing good for Evil and loving his Enemies.

Witness in some respects Inhabile may be received in some cases as 1st Where other proof is Scrump and not Evident to be had 4th In the case of Theft, Roultery, Child birth, Changing of Infants, Simony, &c. *Idem* Prosp. Garin. do Est. b. Quest. 62 n. 25. 50th & 51st Reg. 2^d Error proving the Exec. to crimes of Heresie, Treason, Murder, Robbery, &c. *Idem* *ibid.* n. 52 & Reg. 8th Inhabile witnesses prove against the producer and user of them Prosp. Garin. *ibid.* n. 211 & Reg. 2^d He cannot object against witnesses produced by the adverse party as Inhabile, who cited them also at his own instance to bear witness for him, and there by shew they themselves facts to be tested & abiled, & there is no crime. 2^d 26. 513 infra But a witness cited for or by the parties, may be set by him from witnessing for his adversary, because of some Relation to that adverse. Thus a witness was objected as being within the forbidden degree of propinquity to the producer, albeit the other party had at intervals before produced him 24 Novemb. 1709 Monteith contra Executors of Abbotts case & so when one party produceth a witness who is within the degree to the other, that other may not withstanding this propinquity put Counter Interrogatories to the witness at the same time.

Witness who are not Regularly allowed to testify are admitted sometimes when truth cannot be discovered

Discovered in any other manner, having a liberty to the adverse party of making Exceptions, and leaving the Production of their Good or Interest to the Judge: Which we call Receiving witness upon Nolo. Thus an Indurment any witness to a Defendant for whose Absence it was offered to be imprisoned, during his Indurment was allowed him note to Depose not with standing his presence in the cause 23 Novemb. 1708 Lynn & Scot contra Donaldson. An Indurment servants were admitted cum Nolo as witnesses for their Master to prove the sufficiency of a piece of work told by him, and wrought by them 11 July 1740 Lord Inverary contra Lord 2^d by the jury, was allowed to be examined as witness cum Nolo 9 July 1712 Ray contra Forbes. A present Member of a Town Council was admitted a witness cum Nolo in a case concerning the Common Good of the Burgh 13 June 1672 *Idem* of Indurment contra Estates of Colclough. A Captain German, and one who had married the parties Sister who was Dead, were received cum Nolo where there appeared Anurians 2^d 15 January 1679 Brown contra John of Kirkcubright. In Improbation of Jurors or Approbation, no witness is excluded upon any Exception, but it is the permission Nolo. *Idem* 26. 4 Fel. 4319. And when witnesses are examined as Nobile officio as informers in criminal Judicis all persons, the power are received, and the Import of their Testimonies or what they should work in cause. Considered at Advising of the cause, when in respect of the spontaneity thereof, and of the Subtlety, Capacity, and Integrity of witnesses, one or other of the Exceptions afore said will be passed over 21 Decemb. 1630 Johnston contra E. Annandale.

Objections against witness being Dilators, must be instantly Purified in the first instance, by the oath of the person at whose suit the quarrelled witness is produced, or by the witness's own oath, or the Oaths of other witnesses cited incidentally in an action of Reprobation. For that one, to a term before the witnesses in the principal cause are examined 13 Novemb. 1676 E. Fiedale contra L. Drumolzier. If a witness produced by the Defendant for proving his Exception or Allegation be cast, he will get another witness allowed in place of him. But the pursuer whose witness for proving his libel is set aside, will not get another witness allowed.