Allowed to him; the pursuer's case not being so favourable as the Defender's. If the ordinary find Difficulty about sustaining or Repelling any objection, he putt off the Examination till the next day, that in the mean time he may Consult with the Lords upon it. If objections against witnesses cannot be Instantly verified, the witness must be Received, but the objectant may, at the same time that the witness is Received, protest for action of Reprobature, and prove his allegation in the second Instance; as Record of the Law, that it be may be allowed a term for proving thereof. The Intendment of which Action of Reprobature is not to quarrel the Concurring testimonies of witnesses upon falsehood, which cannot be done but only to prove incapacity, prodition testimonij or Corruption in a witness; or to improve the truth of the Deposition concerning the age of the witness his being Married or not, the free gear he hath if he be worth the Kings Ten Law that is ten pounds &c. and his causa scientia, as to which he is but testis singularis and his oath is not an oath of Verity terminating the proof. Which Initials and causa scientia may therefore be Redargued, and if Disproved in an action of Reprobature, will Derogate from the faith of the Depositions; the advising whereof will be delayed till the Event of the Reprobature 26 June 1623 Cochran contra Gechen. When one of the parties doth foresee or apprehend, that the Other will file as witnesses persons inhabile or Exceptionable, he may raise an Action of Reprobature before they be Examined, and therein produce witnesses to prove his objections at the term assigned to that effect for proving his witnesses. But if neither a summons of Reprobature be Raised nor protestfor at the Examination of the witnesses, or before sentence, Action of Reprobature will not be sustained after Decreet proceeding upon their testimonies: even tho the party who should have protested for Reprobature and failed to do it be Minor 20 feb. 1684 Newtoun of that Ilk contra Pope. Because a party who doth not so protest at the Receiving of witnesses or before sentence is presumed to acquiesce in their Sufficiency, unless the witnesses were Examined in his absence, or that he can Make appear, that ground of Reprobation sufficient to Reject them simpliciter came to his knowledge since that time 30 July 1668 L. Milntoun contra Lady Milntoun Stair lib. 4 tit. 1 § 45 Tit. 42 § 18 & pl. 43 ff Tit. 46 § 16. But one who had acquired from a husband a right to his Lady's Jointure, not being admitted to Compear before the Commissaries of Edinburgh in a process of Divorce at the Lady's instance against her husband for Adultery, to object against the hability of the pursuers witnesses, albeit he had interest in the Jointure, which would Return from him to the Lady upon the Divorce, and the Decreet of Divorce being Extracted; action of Reprobature was sustained at the Instance of the Acquirer of the Jointure, who not protested for before sentence; seeing he was not allowed to Compear in the process of Divorce 31 January 1671 L. Milntoun contra Lady Milntoun.

If no objection be made against a Witness, or the objection made be Repelled, the Judge swears the witness to be Examined by this Formula: that, By God Kings Ch. and as he (the witness) shall Answer to God at the great day, he shall Tell the truth in so far as he knows, and shall be asked at him, and shall Declare no thing but the truth. And then asks him about his age and whether he be Married or not that thereby his fondness of Judgement and veracity may be traced and appear. For he who knows not these things, is no better than an Idiot: and if he swear falsely Concerning these, his testimony is justly to be suspected, besides, by expressing the witnesses Age, it will appear whether he is Capable to Depone upon the facts interrogated which happened many Years ago. After this the Judge purgeth the witness, that is, makes him swear that he gave no partial Counsel in the cause; that he bears no ill will to either party; that he hath Received no gooddeed, or promise of good Deed to Depone in the cause; that no person taught or instructed him how to Depone; and that he is not to be a gainer or Looser by the Cause. When the witness is thus purged, the Judge proceeds to Interrogate him upon the points to be Proved by Act of Litis Contestation, According to the Tenor thereof. But some indirect interrogatories are given in by either party in Writ for explicating the truth, the pertinency and Relevancy use to be Debated by their Lawyers; which the ordinary Determines, and in case of difficulty gives the Lords Answer about them upon Appeal. Either party may interrogate the Others witnesses, not only upon points admitted to that others proof, but also upon Allegiances to be proved by himself. It is pertinent to interrogate who were present at the fact or thing, on which the witness deponed, that it may appear if more indifferent witnesses are not Cited, which the Lords may grant warrant to