to cite. It is also proper to ask, when and where the thing was done, in order to try if the witnesses will Varie as to Circumstances of time and place, and so not be Contesters or Concurring witnesses Hair lib. 4 Tit. 43 § 16. A witness is not to be interrogated concerning things that may infor a Crime or Infamy against himself, Prosp. Farin. de testibus Quest. 73 n. 53 & seqq. Nor of things not falling under the senses, Ibid. as to a persons Concurring by advice with another, but only as to words or Facts he heared or saw that person say or do 28 June 1712 E. Winton contra Hay of Drumelzier. When a Witness Deposes, the Judge is to notice whether he gives his Evidence with an Air of sincerity or exactness and Judgement, and if his Declaration be steady and firm. For if he Varies in his Accountings or Deposing Circumstances and facts that are Different or even Contrary, or if he Waver in his Deposition, and be timorous in doubt of the fact which he Relates, this Uncertainty, and these variations Rendering his Evidence Uncertain and suspected, will cause it to be Rejected L. 1 C. 2 L. 3 ff. de Testib. Ad. Witness Examined ex officio prevaricating in his oath, Deposing and then acknowledging the same thing, was ordained to be put in the Irons, and the next day to stand in the Pillory with a paper on his face signifying his fault, and declared infamous 6 July 1669 Barclay contra Barclay. A Witness must always tell his causa scientiæ, the Reason how he came to know such a thing; that it may appear, he does not Depose upon fancy Conjecture or Strained Consequences. A Witness is not allowed to give in his Oath in writ, but must answer viva Voce to interrogatories put to him L. 3 § 3 & 4 ff. de testib. Prosp. Farin. de Testibus quæst. 80 n. 29 & seqq. Vid. Sup. pag. 1861.

Peers of Great Britain produced as witnesses in a cause between party and party, must be sworn to give Evidence as Other persons Styles Practics Regist. Jul. 9. 1661. By the Civil Law, Bishops are not obliged to come into the court to Depose, but are only put to Declare the truth upon the Evangelists out of court without an Oath, L. 7 & Authent. Sed Judices C. de Episc. & Clerico. In France Bishops Depose in Courts of Justice, laying their hand upon their Breasts, and not upon the Evangelists, Rebuff. in Proem. Constit. Clem. 5. In several parts of Germany the Nobles send their Depositions in writing under their seals without oath, Carpzov. Jur. Consist. lib. 1 Defin. 10 n. 13. The Formula of a quakers Oath in Civil Causes is set forth Supra page 1034.

An oath given is put down in writing after this form. A. B. Of such an age Married (or not Married) & so called) sworn, purged of Partial Counsel, examined upon Oath, interrogated &c. Deponed &c. Causa Scientiæ Vel Cum (it is Manifest from the Narative of the fact) or causa scientiæ, the Deponent was born and bred in such a place, and lived there so many Years &c. And this is the truth as he shall Answer to God. Which oath the witness doth sign if he can write, and if he cannot write, that is mentioned, and the oath is subscribed by the Lord ordinary whether the witness signs or not. Where a witness is Re-examined Nota, it is Marked before the Deposition that such an objection being Made, the witness was admitted viva Voce.

In the Chancery and Ecclesiastical Courts of England, Depositions are taken in writing by a Register. But in the Courts governed by Common Law, the Examination of witnesses in Causes whether Civil or Criminal is taken only viva Voce.

A Witness after his Declaration is taken down in writing, ought not to go to the Place where those to be Examined are Attending Hair lib. 4 Tit. 43 § 18.

By Act of Sederunt 7 July 1688 it is Declared, that no Regard will be had to the Depositions of witnesses whose names are not marked upon the Rol or Warrand for Examination by the ordinary, immediately after he took their oaths. But this is in desuetude.

Formerly, when all the witnesses had Deponed, the ordinary sealed the Testimonies with his own seal, not to be opened till they came to be advised; and when opened at Advising (which was then with Close doors) so soon as Decreet was pronounced, the Testimonies were sealed up again never to be opened thereafter. The Reason for keeping them thus secret, was, that the witnesses might not incurr hatred or prejudice by their Testimonies, and so might the more freely Depone without Respect of persons. But now Publication of the Testimonies of witnesses in the Clerks hands, is allowed to the parties after advising, that they may take Copies thereof if they please Act 18 Jac. 2 Parl. c. 7. By which there are these Advantages, that witnesses will not be so