

947. speak to them. The pannel May before they are sworn object against their being received, or May Cross Examine them after they are sworn. All Exceptions which may be witnessed in Civil cases of which I have treated before vol. i pag 484 & 485 fully against them in Criminal trials. I shall here take Notice of some Specialties Concerning Witnesses of Crimes. 1st A person Must be More Advanced in Years than 14 to qualify him to be a Witness of things Requiring Judgement, as self Defence, Ratification of Seditious Words. Crim. part 2 tit. 26 55. But in other cases, Minors after 14 are allowed to be witnesses stat. 2 Rob. 1 cap. 34. No Quaker or Reported Quaker is qualified or permitted to give Evidence in Criminal causes 7 Geo 3 cap. 34 56. 1 G. 1 cap. 6 June 1703 cap. 6. 2^d Socius Criminis, a Companion in the Commission of a Crime, or that was Accessory to it cannot Regularly be Received to witness Against his fellow Criminal, whether he be principal Actor or An Accomplice; no, not in the case of a Crime which is punishable only by fine without any Reflection of Infamy. These Accessories were not admitted to bear Witness in a Crime punishable by a pecuniary Mult; albeit their Accusation or Testimony therein was not Discredited by a sentence, but only offered to be proved by their own Oathes 9 March 1671 Charles 2 for 3 his fond. seeing the Reason why Socij Criminis are Reported, is not because they are Infamous, infamy and Accusation to a Crime being stated as two Different objects. (stat. 2 Rob. 1 cap. 34) but for that they are Under terror of Danger from the pursuer, who, if they do not serve according to his satisfaction, may pursue themselves; and are Under Temptation to lay the guilt wholly upon their Companion in order to free themselves. But in some of the great cases where the publick security is immediately concerned, as in treasons and Depredations or Insurrections 13 Feb. 1674 M^r Lord of Albion 27 March 1684 Sir Hugh Campbell of Bodnock 23 December 1684 M^r Robert Bailie of Garriwood Stewart Answers to Birket. doubtless

Witnesses. Fallow Criminals are admitted to bear witness 943
if they be first either purged or Indemnified: Hence not being
so great Reason to Dispense with the strictness of proof
in lesser Crimes, as there is for Admitting it in the most
hainous Crimes wherein the Common wealth is more
concerned. Again saij Criminals are Received as Necessary
Witnesses in secret Crimes, as witchcraft, falsehood &c.
where other witnesses cannot be had and so they were ad-
mitted by the Lords of session in the case of falsehood
9 November 1663 Lady Gowrie contra Captain Barclay. 31
Women are not Commonly admitted witnesses in Crimes.
And the Justices Declared (21 August 1664) that they would
Receive no Woman to bear witness in Theft, save
ex officio et cum Nota. But Women are allowed to bear witness
for proving occult Crimes as witchcraft Murdering or Phau-
ging of Infants; threatening to burn a house, or Domestic
and private Crimes where no Men are present as the Assaulting
and beating one in a house 8 November 1675 a man Murdering
his wife within his own house 21 April 1664 John Swinton;
the Assaulting and Injuring one in a town under Flood and
Silence of Night 19 July 1680 John Buchanan; or a Crime
Committed in some solitary place. In a trial for Homicide,
Women witnesses were Received cum Nota as to all things
Done without doors, and Admitted simply as to all things
Done within doors 8 September 1693 William Aird. Because
Robbery is often privately Committed, a person Robbed and
his servant were Received as witnesses to prove the
Robbery 10 September 1723 James Cranston. And for
the same Reason, in a trial for a Rape, the Woman
Ravished and her parents were examined as witnesses
20 Feb. 1650 William Meris. If Go. great friendship, to the
pursuer and Capital Enmity against the parrel are causes
to let witnesses produce for the pursuer. Thus it was first
taught to cast a witness for a private pursuer of an Indict-
ment for Manslaughter, that he was a Friend to the
pursuer, and to the person killed, lay converse and behaved
with him in every Circumstance as a Brother 9 August 1620