of Declinator. The Doctors think it. Prosp. Farin. ibid. n. 841. And of Law a Declinator has lained against the Lord Polwarth before the Commission for plantation of Churches and Valuation of Tithes, in a Cause betwixt Lord Alexander Hay and Sir James [illegible] Hall of Dunglass who had been Married to My Lord Polwarths Sister, albeit the was then dead and he had Another Lady. Because great affection not with standing Continues. But Doctors think it is otherways in the case of a Witness. Sir George M'Kenzie Crim. part 2 Jul. 17 § D is of Opinion, that what is a sufficient Reason to cast a Witness, is a much More Sufficient Ground to Decline a Judge: seeing a Judge may Ruine a cause which one Witness cannot do; And the office of a Suspected Judge may be Supplied by Another, where as a Challenged Witness may be necessary where there is Parity of Witnesses. a Judge cannot be Declined upon the Account of Consanguinity or affinity, whose Relation is the same to both parties. Prosp. Farin. ibid. n. 842 Mair Lib. 4 Tit. 39 § 14. Because Pari Nuptiarum affectionis causa Suspicionem fraudis Novell 6 7 8 § Idem Rat. Nupt. The Ground of Suspicion upon the Inequality of affection to the parties Cesarin. Nor can he be Declined because of his Relation to the Member of a Society, College or Corporation in a cause at the Instance of or against such a Society. Stuart 26 July 1711 A Declinator was not Sustained against the Lord Justice one of the Judges in the Session in a cause about Customes of the Port at the Instance of Alexander Paterson and others against the Town of Edinburgh: Albert Gavin Plummer my Lord Register was then a Member of the Town Council Defenders in the cause. However it is thought that such a Judge should freely Decline himself when there is a Collegiate body of Judges with him as in the Session: Tho there a Lord cannot Decline himself Unless the Rest of the Lords allow him to do so. But in England, if a body Politick or Incorporate sole or Aggregate of Many, bring any Action that Concerns their Body Politick or Incorporate, it is a principal Challenge to a Juror, that he is of kindred to any of that Body Corporate. Fitzh. 157 a. Because the Whole Body Politick or Incorporate can have no kindred, Yet it Consists of Natural persons. Again, a Judge cannot be Declined because his Kinsman is advocate for one of the parties Prosp. Farin. ibid. n. 859. 2° A Judge may be Refused as Suspected of Partiality when he hath Interest in the cause Directly or Indirectly. 1° A Judge is understood to have Interest in a cause Directly, when in the Event thereof he will Lose or gain. By a Statute in France Anno 1650

1650 a Judge cannot pursue before his Colleague In office Rebel quippe Societas Fils quodammodo fraternitatis l. 63 pr. ff pro Socio. But no such thing obtains with us and one Colleague may be either Judge or Witness for Another M'Kenzie Crim. part 2 Jul. 1754. A Deputy Bailie Steward or Bailie may Judge in the Cause of the principal Gudd Act 84 Parl. 6 J. 6. Thus a Bailie of Regality tryed Homicide Competent to Judge in the cause of his principal the Lord of Regality, and not Lyable to be Declined as Suspected 18 June 1674 Walker contra Brown. Bailie of a Burgh may Judge Concerning debts due to the Burgh 17 July 1706 Forbes Treasurer of Dumbar contra Spreule. Sheriffs and Bailies of Regalityes &c. Decern for payment of Fines and upon the Contravention of prona Clauses pursued at their procurator for Fiscals Instance, tho some part of those Fines and penalties come to their own use. The Admiral was sustained Competent to Judge in a process at the Instance of his procurator Fiscal against a purchaser of Wines Adjudged as prize and Escheated by order of the Admiralty for payment of the Penalty Incurred thro his not performing an Article and Condition of the Enrolment 26 June 1705 Riggins contra Brand. Barons may Purchase their Tenents and their Vassals upon their own Courts. 2° A Judge is Reckoned to be Interested in a Cause Indirectly if quand. Novel Consimilem Consequently when he hath a Pursuer [illegible] the same Circumstances Depending, Prosp. Farin. Fragment. Crim. part 2 Argum. Colquhoun Cause Appeal Linen Sub spectus Recusari n. 784 c. 18 X. de Judiciis Mair lib. 4 Tit. 39 § 14. 2° When he hath taken a Bribe by himself his wife or Servants or given [illegible] partiale counsell in the Cause [illegible] Act 93 Parl. 6 J. 6 Counsellor 104 Parl. 7 § 5. But when a Lord of Session hath suffered himself to be Pleaded in favour of Either party without Declining the same to the Lords in Presence of Sederunt Mo shewing the same to the Lords in Presence of Sederunt Mo vemb. 1677. 3° A Lord having Deponed as Witness in a cause is a ground to exclude him from Judging in that point wherein he was Witness: but he may Judge in other points of the process 22 January 1678 Play of Drumelzier contra Gweddale Stair affords no Declinator, that the ordinary Lord before whom a Cause is brought having been Instrumental by the Influence of his Design to raise the Action Dissuaded them from it as unjust or Illegal or Dishonourable or that his Lord Ship did Judicially in the Exercise of his office direct the Pursuer how to Make his Allegation Relevant Mair lib. 4 Tit. 39 § 14 Vers. Declinator are also Competent. A Lord of Session cannot