

paying Acquiring or Retaining Annual Rent Irregularly, if witness pick up by chance were Receivable, all former ties of the Nation would be precarious, and last no longer than till a wicked Debtor find two witnesses no more or than himself to prove, what Justice would be equal to a Discharge of the debt. Reasoned for the pursuer. If there be not a great Indulgence given in the proof of Usury, that oppressive practices will be carried on with Impunity: and whose own law hath allowed such a latitude in the proof thereof as to take the oath of the pursuer guilty against himself, Contrary to what is observed in other Crimes, the pursuer cannot be compelled to prove his libel, as any other Crime may be proved by witnesses. And the old law doth not allow payment of a bond to be proved by witnesses, where the bond it self appears paid and discharged and Uncancelled, because of this presumption that no Debtor will pay without Retaining this obligation or getting a Discharge: the many things that may directly Influence the taking away of writs, as the cause of granting, or Manner of Electing them by fraud, force &c. are every day proved by witnesses. Nor doth the Act of Parl; 1676 tie down the proof to Instrumentary Witnesses or oath of the Creditor, but only allows proof by oath of the Debtor or Instrumentary witnesses, without necessity of the Debtor's oath, which a former law Cap 247 had 15 J. O. found to have Required. But farther More after usury through all Britain is tied down to the same stand art (2 Anne sess 2 cap. 1) it would seem strange, if the same performance for Usury in Scotland should be allowed, and in England for that individual fact should be Condemned; the same in both Nations the trial be upon the same Statute. And therefore since any witnesses are admitted in England in such a case, they ought to be Received

here. Supplied for the Defendant, the British Statute to Enquire only the Definition of the Crime; what facts are Comprehended Under the law, and what not, but Determined Nothing as to the Manner of proof in the several parts of the British Kingdom, for Establishing facts that go for the Crime, which Continued as before to be observed according to the form and Tenor of the Law in each Country. So that to tie it Down here to the Manner of proof in England is no less unreasonable than to try the proof before the Court of Justice by a Jury, because such is the Custom in England. The Lords found the libel probable by other habile Evidence, as well as by Instrumentary Testimony 7 January 1724. Mitchell contra Dobson. In England a man who Agreed to pay Money upon an Usurious Contract may give Evidence against the Usurer, after he hath paid off the whole debt, the not before, lost by such Means he might avoid his own Debt Raym. Rep. 91. Hanthard vs. B. lib. 1 chap. 42 518 but in Scotland, one Brown whom the Creditor had Received More than the Legal Interest had not Received as a Witness after he had paid the debt, in a suit at the Kings Pleas and Instances for proving the Usury. Because the Law appoints the Crime to be proved without Receiving the oath of the Debtor de Acty. Albeit it was pleaded, that the libel on the contract be Received as Evidence of the trial, like the Creditor's oath he could not be cast as a witness, Especially considering that after he ceased to be Debtor he had no longer Interest or Advantage by the Debtor's being Convicted. And the putting him upon oath of all Maties as it usually, load of all pretences of his harboring any Grievance against him; Unless it could be supposed, that such a one is punishable in any case what so ever to bear witness against that gives an Evidence 11 November 1667 James Wilson. The cause why a Debtor gives any gratuity to his Creditor being often an Act of the Mind and hard to be proved; any thing given by a borrower to the lender above the legal Interest, is not sufficient to fix the guilt of Usury upon him.