

949. In trials on the Statute of Westminster, 1285, according to a custom for a long time, among the English, it was usual to call witnesses, not only upon a plaintiff, but also upon a defendant, and to examine them in the same manner as witnesses. In some cases, the English have been known to call witnesses, not only upon a plaintiff, but also upon a defendant, and to examine them in the same manner as witnesses.

1691 Mr of Garbot & others. Persons Reported from Witnes for the pursuer of a crime, in respect they were considered as his movable servants, albeit they were once servants, their terms being expired. Nor was it regarded as a libel to capacitate them, that their terms were designed to be renewed 30 July 1636 David Strang. But a Domestic servant to the pursuer of the private crime of willfully raising and burning part of his house, was allowed to be a witness 30 July 1677 Alexander Cunningham. Capital. M. betwixt the pannel and a witness produced by the pursuer in so far as eight days before committing of the crime libelled, they beat each other to the effusion of their blood was sustained as a good objection against that witness found proved by his oath 30 July 1677 Alexander Cunningham. That a person Expresses Malice and Deadly force against the pannel by threatening to kill them, was found to report him as a witness, and witnesses were allowed to be received for proving thereof 2 April 1691 Captain Bruce & Lieutenant Arrat. It being ordinary for the raising of a discrimination to call therein as Defendants all such who think may be brought as witnesses against him in the principal cause, in order to set them by; the Lords have received cum Nota some of the persons called as Defendants in a discrimination, to bear witness in the principal cause against the pursuer of the counter process. But such witnesses ought not to be admitted, till the libel against them be discussed 19 August 1691 Mr of Garbot & others. McKenzie Crime. part 2 fol. 26 11. Quarta, if such as could not pass witnesses for a private crime, may be received at the instance of the Kings Advocate. Sir George Mackenzie (lib. 113) is of opinion, that persons who are incapable to bear witness at the instance of a private pursuer because of Insanity or Minority cannot be produced by the Kings Advocate: and that those who are incapable only upon account of their Relation to the party, cannot be received tho' that party be not the pursuer, if an

advantage may accrue to him by their oath. Unless he disclaim and renounce it; or if he suffers any affront by the crime, which may occasion his Relations to retain some private Grudge or Resentment. But ordinarily the Relations of the party injured, are allowed to witness at the instance of his Majesties Advocate. In a process at the Kings Advocates instance only against one James for Witchcraft, the Informers brother in law was received as a witness; and yet the brother in law to one alleged to have been injured by the pannel, was cast from being an Affixer 21 March 1622 the case of Margrat Wallace. Which Sir George Mackenzie (lib. 113) thought both Irregular and Dangerous.

Exculpation is so favourable, that in the opinion of the Doctors Many who could not be received as witnesses to prove the libel, as one brother for another, a Domestic servant for his Master, affinis pro affinis, would be admitted to prove the Defense. Gomes. 3 Var. Resol. cap. 12 De probat. n. 23. Pross. Harin. 50 testibus qui 62 n. 90. Carpent. Jurisprud. part 2 Const. 3 fol. 8. 9. That an hereticks movable servants and servants were received as witnesses, for proving their Masters defense of his absence from the Kings best 16 June 1630 James Mathew of Tithernie. Sir George Mackenzie (Crime part 2 fol. 22 14 Jusin.) says, that in Rutherfords case it was found that women might be admitted to prove self Defense. But this is mistaken, for there the Lords refused to admit women witnesses, for proving that the pannel killed in self Defense, in regard thereto was no penuria of tium longum Mortis 10 November 1674 Andrew Rutherfords. Quarta, if not Pitor, may be Examined for Exculpation the Defendant in a Criminal process, tho' a summons of Exculpation had been raised: it may be pleaded, that they should not be Examined. Because of the pannel might have Pitor them, and may blame himself for neglecting the ordinary remedy of Citation competent to him. If the witnesses may be Examined for the pannel, then it would never be any necessity to raise a summons of Exculpation.