

lives or estates 4th 17 Feb. 1653. Again all were ordained to give oath as to their knowledge of any Crimes against the public laws and peace of the Kingdom, and particularly of the Rebel and Idler communing with persons declared fugitives or Rebels when required, and of the pain of fining and Imprisonment, or banishment, provided, that no Mans oath or Declaration against any other person, should infer against himself the pain of loss of life or Member, or banishment Act 2 Parl. 2 sess. 2 Ch. 2. Which provision as to calling by Witnesses, seems to have been needless: because the thing Man declares upon oath as a witness can work any offence against himself as Juror McKenzie observ. on d. Act 2. But yet in the statute Making persons refusing to Depose as witnesses in cases of treasons or house Conventicles or church Inconformities, punishable as guilty of those crimes respectively in which they refused to be witnesses: it was thought fit in Majorom Banishment to Declare, that an oath so omitted, should not militate Against the Deposition himself any Manner of way, Act 4 sess. 1 Parl. 17. No Commission to Examine witnesses is granted in Criminal cases Nov. cap. 5 In fin. Prosp. Garin. de Gest lib. 2 qu. 77 in 71 1653 Los Lois Civiles &c. Gom. 1 lib. 3 tit. 6 sect. 3 art 22.

If no objection be Made Against the Witnesses, or the objections be Repelled they are called in to be Examined, trials of Criminals in England, the oaths of Witnesses are taken Viva Voce, and Not Recorded, but those of the Jury take their private Notes in writing of what they think Material in such oaths, for their own Memories. And it was so in Scotland from 15 October 1652 till 5 July 1653 while the English Commissioners Judges Criminals except in one particular case, December 1653 Macdonald of Kilbane & others. But now all Depositions of witnesses in causes before the court of Justiciary in Scotland are Entered and Recorded in the Books of the Journal. The Witnesses are called in one by one, and sworn as in Civil cases by the Judge who Examined him third. The

Witness holding up his right hand says, by God himself ⁹⁵⁴ and as I shall answer to God at the Great Day, I shall Declare the truth and Nothing but the truth, in so far as I know, and shall be Asked at me. Then the Judge Asked him how old he is, and if he be Married or not, and purged him, that is if he bear any ill will or Malice to the pannel, or if he hath got any good Good, or promise of good Good or Reward, to swear Against him, or if he hath been Directed or Instructed how to Depose to which Questions the Judge having Received Satisfying Answers, Examines him concerning his knowledge of the facts libelled against the pannel, and how he came to know such things. The oath Given is then written by the Clerk after this Manner: J. B. Aged 36. Years or thereabouts, Married (or not Married) solemnly sworn purged of Malice, prejudice and partial Counsel, Examined and Interrogated upon the points of the libel, Deposed &c. Causa Leion tie patet when it is Manifest from the Narrative of the fact or causa frontie patet &c. and this is the truth as he shall answer to God. The process of the Court swears and Examines the first Witness, the eldest Lord the second, the Noal Lord the third, and so forth so far as long as there are any Witnesses to be sworn. But sometimes one Lord will swear and Examine two or three Witnesses, if their Depositions be short. Every Deposition is subscribed by the witness if he can write, and also by the Judge who Examined him; and if a Witness cannot write, that is Mentioned, and the Judge and Examiner sign the oath. All the Depositions of Witnesses are Entered and Recorded by the Clerk in the Books of the Journal. The Evidence against the pannel being finished, he is allowed to prove his Defence or Ground of Exculpation, if any