

Agreement among them too formal and tied in the very same words of a long story, is suspected to have been contrived and promiscuously Pros. Garin. ibid. n. 29. 29. gularis tollis are those who do not Concur in their Depositions. Singularity of testimonies is Divided in 3. stativam, adminiculativam, & Divorsificativam. Singularity of stativa is, when two witnesses vary in time or place, when or where a Crime not Reiterable is said to have been committed: as if one witness Depone that such a Man was Murdered at Cambridge and the other say his Murder at Reading. In which Depositions could not be Conjoined to prove the Murder. Pros. Garin. de Gestibus qm. 64 n. 3. 54 Corp. 20. fin. p. 10. p. 10. part 1. Const. 16. def. 40. Whence from part 2. p. 26. 94. A thousand witnesses of this kind prove no more than one, nay less than one, because the one witness and the faith of the other. Such was the Evidence against Susanna charged with adultery by the two Elders, who of one said he saw her lying with a young Man in a Madrick tree, and the other said it was under a tree Daniel cap. 13. Singularity of adminiculativa, where the witnesses do neither Concur nor clasp together but do some way support one another: as when for proving that a horse was stolen, one Depones, that he saw a thief go into the stable without a horse, another that he saw him take the horse, or witness in the case of Murder, one witness Depones, that he saw the party Accused with a bent Pistol or sword go into a Room, another Depones that he heard a shot or strokes in that Room, and saw the Accused coming out of it Alone, and a third that he saw a person lying slain in the Room: This Singularity doth not Enervate the Depositions Pros. Garin. ibid. n. 6. 112. Whence it is Singularity of Div-

Divorsificativa, is when witnesses Depone upon Different Acts of a Crime Reiterable, as adultery, heresy, simony &c. which is proof of the Crime in Generall and sustained in order to a civil effect, as Divorce for adultery Pros. Garin. ibid. n. 150. 223. 229. But in a Criminal process for adultery in order to Capital Punishment (where more Exact proof is Required) the witnesses ought to Concur in the same Individual Act Pros. Garin. ibid. n. 55. 156. 229. Jul. Plaz. Content. 8 fin. qm. 59 n. 17. Whence from part 2. p. 26. 94. In such a Criminal pursuit, Adultery was found proved by one witness who passing thro' a hole saw it Committed, and another who immediately there after looking thro' the same hole did also see it George Swynerton. Because both those witnesses saw the same fact, tho' they could not see it at the same Instant.

Where any question doth Arise concerning the Variety of proof, the Justice ought to Determine the same 3 December 1669 Girdley Melgibon Alias Menab. And then the Assize was immediately to be Impleaded. But in case where, after the proof was produced, a Debate arose concerning the Relevancy of a part thereof, the Justice at the Desire of his Majesties Advocate, continued the trial and the Impleading of the Assize till the next day, that the privy council order might be had about it: because the proof was not Understood to be Closed by the production of papers and witnesses, till all questions concerning the Relevancy of the proof were Determined 2 & 3 December 1669 Girdley Melgibon Alias Menab.

It is a Received Rule in Law, that a questionum Juris Respondent Juris, as questionum facti Respondent Jurisdiction: that is, the Justice hear and Determine the Relevancy, and the Assize the proof.