

Of the obligation arising from oath.

An oath is a religious invocation of the name of Almighty God to assure the truth of what is done, or a calling God to witness the same. An oath (from the Saxon Eoth) is a security which serves for promoting truth and Justice in humane affairs required on several occasions, either to corroborate an engagement, or to confirm an evidence or declaration touching the truth of a matter of fact. Which security consists in the confidence that one may have, that he who swears will not violate a duty, where he takes God to witness for his fidelity in what he declares or in what he promises and to be the Judge and avenger of his infidelity if he is guilty of perjury. So that the use of an oath has been invented as a precaution against the Inconstancy and Infidelity of mankind and to supply the firmness of so strict a tie of Religion. the want of other assurances, which he whose oath is taking cannot give, or which it would not be just to require of him. When this security of an oath is termed by some Firmamentum Veritatis, and by others Primum Sacrum; It being the seal & Sanction of the Justest resolutions, and the greatest Pledge of Humane Fidelity.

It was indeed an old custom to swear by the name of created things, as the Sun the Earth the Heavens, the Swearer Prince, his Children, or his own head; thereby wishing that these might prove hurtfull to him, or that he might be punished in them, if he swore falsely; because it was not fit upon every slight occasion to have recourse to the Creator and Father of all Things 13 & ult. 14. 15 pr. & 16 ff de Iuro Jur. Matth: 23. 16 & seqq. which are oaths, seeing he who swears by such things, swears by God who made them. Nay more, he who swears by false Gods, his oath doth bind him: Because in that general sense, he hath the Deity in view, tho under a false expression, as if he were swearing the true God looks upon his perjury, as done in Contempt to him. Therefore the oaths of Heathens and Mahometans must be taken in the form their Religion allows.

The ordinary form of an oath with us, is by pronouncing with an uplifted hand, By God himself and as I shall answer to God at the great day &c. But Anabaptists and Quakers whose principles Religion makes them Boggle at this formula,

are allowed to give their affirmations and Declarations ~~in~~ in other terms. So a Declaration upon Faith and Honesty given in Holland by Anabaptists upon a Commission to take their oaths there, was sustained here as equivalent to an oath, in common form. 20 March 1707 Edin and Hume contra Hunter. Quakers in England from 4 May 1696, and in Scotland from the first year of the Reign of King George, the first till the 19 October 1721 in the eighth Year of the said Reign, were allowed to give Evidence in Civil Causes upon a solemn affirmation or declaration; In the presence of Almighty God, the witness of the truth of what they say 1 & 8 W. 3 Cap. 34 i. Geo. 1 Cap. 6. But now in Scotland and England no more is required of Quakers than solemnly sincerely and truly to declare and affirm &c. Without mentioning these words. In the presence of Almighty God, the witness of the truth of what they say 8 Geo. 1 Cap. In the court of Exchequer, a party swearing touches with his right hand the book of the new Testament whence it is called a corporal oath.

No doubt he who swearing should be in his right senses, and consider before hand what he is going to do; His heart should agree with his words, and his actions answer his mind. The words of an oath oblige in that sense in law we think our selves unbound by him to whom we swear. For in oaths natural condition or mental reservation is admitted but simplicity and plain meaning is agreeable thereto, which is not to be extended beyond the literal sense and interpretation of the words.

Oaths may be divided into Promissory and Decisive or Affirmatory Oaths. at Decisive Oath is that which is taken in a Court of Justice, by a witness or by one of the parties in a cause concerning a Matter of fact past or present. But this falls in more properly to be spoke of afterwards. Vid. Eng. Part 7 Book 2 Chap. 1 Tit. 3 Sect. 1.

A promissory oath, which is used to enforce or corroborate an Engagement is promisie confirmed by an oath, either actively to perform something or passively never to quarrel it. Thus Law obliges persons who enter upon Publick offices to swear the oaths of the Government, and to make oath that they will execute their offices according to the rules prescribed to them. Tutors Curators and other Administrators are required to swear, that they will faithfully perform the duties of their function and even in secret between particular Persons, sometimes one of the parties swears to the other that he will execute what he has promised, or not quarrel what he has done. All which oaths relate to future Deeds. The effect of a Promissory Oath is much disputed by the Lawyers. It is generally agreed, that if any one willing