

the oath of the informant, not for publicity, but as a guarantee of good faith.

"5. That by this means it is hoped many cruel offences against the person which are now frequently and continuously committed by men against their masters and fellow workmen, might be prevented or detected; it being probable that many persons would be willing to communicate to the magistrates information which might even be the means of saving life when they would not be willing to go to a police station to be regarded as public accusers.

"6. That the laws against drunkenness should be more stringently enforced as a further mode of preventing crime, and every person in such a state of intoxication as might fairly lead to an apprehension that mischief might be the result, should be detained in custody by the police until such person became sober and was fit to be discharged with safety.—*English paper.*

## SELECTION.

### ON THE UTILITY OF OATHS.

(By Edward Gardner, LL.B.)

The subject of oaths and declarations taken in various departments of the State has latterly attracted the attention of Parliament; and during the session 1865-66 a Commission was held to inquire what oaths, affirmations, and declarations are required to be taken or made by any of Her Majesty's subjects in the United Kingdom other than those taken or made by members of either House of Parliament, or by prelates or clergy of the Established Church, or by any person examined as a witness in a court of justice, and to report their opinion as to the dispensing with or retaining and altering such oaths, affirmations, and declarations. To the report made by the Commission, are appended 300 closely-printed pages of oaths and declarations taken by the holders of different offices on their appointment to them, and to these many others might be added which the Commissioners seem to have missed. Passing over the report itself, which appears to be fully concurred in by one only of the five Commissioners who sign it, we come to the dissent of Commissioners Lyveden, Bouverie, Lowe, Maxwell, and Milman, who seem to have brought their great intellects to the examination of a question in a truly philosophic spirit. They come to the conclusion that by far the greater number of the oaths into which they had examined, ought to be abolished, and the rest changed into some convenient and distinct form of declaration:—

"The imprecatory forms of oath in common use," they say, "appear open to very grave objections. Such oaths seem to assume that God's vengeance may be successfully invoked, and God's help declined or accepted by frail and fallible man, or made conditional on the truth of his assertions or the fulfilment of his promises—notions which seem inconsistent with the teachings of religion and of reason."

The limits of this article do not admit of detailing the arguments of these five dissenti-

ents. To those who would wish to pursue further the study of the subject opened up by the Commission, and who may not be inclined to adopt the views set forward in this paper, a careful perusal of the dissent referred to is earnestly recommended.

A glance at three hundred closely printed octavo pages of oaths and declarations taken by members of Her Majesty's household, officers of public departments, of courts of justice, by soldiers, sailors, and volunteers, by county, borough, and parochial officers, by recipients of the different orders of knighthood, by members of universities, colleges, and schools, of traders' guilds, of various incorporated societies; a glance at these is surely enough to set us thinking on the wholesale swearing that seems to be required in almost all the public relations of life; and to the catalogue are to be added several oaths and declarations that have been omitted, also those taken by members of both Houses of the Legislature, by the prelates and clergy of the Established Church, and by jurors and witnesses in courts of justice.

History tells us that oaths were taken in the earliest ages of which we have any records; and the compilers of legal history, wholesomely impressed by precedent, assert that, "however absurd or perverted by ignorance and superstition, an oath in every age has been found to supply the strongest hold on the consciences of men, either as a pledge of future conduct, or as a guarantee for the veracity of narration."\* Under some of the deductions from and abuses of the civil law, of which the middle ages were fruitful, heathens, Jews, and other persons, whose opinions ex-cathedra fulminations then stigmatized infidel, were declared incompetent to be witnesses in courts of justice. The giving of evidence the old lawyers considered rather a right than a duty, and consequently incompetency was a fitting punishment on the holders of obnoxious opinion—a punishment in which frequently the innocent Christian was included, who, having a suit to maintain, happened to have only the evidence of rejected witnesses on which to rely. And Sir. Edward Coke, not free from the bigotry of his time, is found to declare that an infidel (*i.e.*, any one who was not a Christian) could not be a witness: "All infidels," he says, "are in law, perpetual enemies, for between them as with the devils, whose subjects they be, and the Christian there is perpetual hostility and can be no peace." About the year 1745, a better spirit seems to have dawned upon our tribunals, and in a celebrated case† then argued, it was decided that the words "so help you God" are the only material part of the oath, which any heathen who believes in a God might take as well as a Christian. Consequently, the kissing the Evangelists—with or without a cross on the cover—in England and Ireland; the uplifted hand in Scotland, the touching the Brahmin's

\* Best Ev. § 56.

† *Omscheid v. Barker.*