

were called on behalf of the prosecution, whilst the objection was taken by the counsel for the defence, the case is clearly differentiated from the cases mentioned above, where the objection was raised by the witness himself. Thus understood, the decision seems to amount merely to this: that if the usual form of oath is binding on the conscience of a witness, the Court will refuse to consider, on objection taken by the other side, whether another form would be more binding. It stands, therefore, much on the same ground as the decision in *The Queen's Case* (1820), 2 B. & B. 284. There it was held that a witness, having taken the oath in the usual form without objection, could afterwards be asked whether he thought it binding on his conscience; but if he said "Yes," he could not be further asked whether he considered any other form of oath more binding.

Cases similar to those mentioned above having given rise to doubts, the Act 1 & 2 Vict., c. 105 was passed. By that Act it is provided as follows: "In all cases in which an oath may lawfully be and shall have been administered to any person, such person is bound by the oath administered, provided the same shall have been administered in such form and with such ceremonies as such person may declare to be binding." This statute has always been interpreted to confer a right upon a person who is willing to swear, but refuses to be sworn in the ordinary form, to have an oath administered to him in any manner which he may declare to be binding. Thus the law remained until 1888, when by the Oaths Act of that year, section 5, it was enacted as follows: "If any person to whom an oath is administered desires to swear with uplifted hand in the form and manner in which an oath is usually administered in Scotland, he shall be permitted so to do, and the oath shall be administered to him in such form and manner without further question."

The formula of the Scottish oath is as follows: "I swear by Almighty God [and as I shall answer to God at the Great Day of Judgment] that I will tell the truth, the whole truth, and nothing but the truth." During the debate in the House of Commons in 1888 it was stated that the words inclosed within brackets are often left out of the oath in Scotland; but the then Lord Advocate (Mr. Macdonald) emphatically denied the fact, and warmly declared that it was "utterly contrary to law to leave that reference out." Notwithstanding this high authority, there can