

ON THE UTILITY OF OATHS.

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 dissentients. 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 hand and foot in India, the placing the forehead on the Koran in Constantinople, and the breaking of a saucer in China, are all mere forms surrounding the great substance "so help you God." But our cousins on the other side of the Atlantic seem to be wandering away from what we may call the imprecatory sanction of the oath, for their books say that witnesses are not allowed to be questioned as to their religious belief—not because it tends to disgrace them, but because it would be a personal scrutiny into the state of their faith and conscience foreign to the spirit of free institutions, which oblige no man to avow his belief.* With them the curious anomaly could not have happened, which was made patent to the British public a few years since, in a case brought by a man called Maden, in an English County Court.† His only witness was his wife, who, on being examined on the *voir-dire*, stated that she did not believe in a God or in a future state of rewards and punishments. Her evidence was rejected because she dared to speak the truth; had she lied and professed the necessary belief, her testimony must have been received. The Judge had no sympathy with the witness, but, assuming to be an authority in religion as well as law, he told her that she must take the consequences of her disbelief in the loss of her property, the subject matter of the suit.‡ Happily, Atheists are rare; were they however more numerous, the interests of justice must long since have demanded the admission of their evidence. Truth is what a court of justice desires; the exclusion of the honest infidel will not secure it, and the dishonest will not hesitate to profess the necessary qualifications for giving evidence.

Having taken this hasty glance at the history and nature of oaths, let us for convenience divide them into the same classes as those adopted by the five dissentient Commissioners whom I have already named. We have then:—

1. Oaths to the breaking of which no penalties are attached by law, and

2. Oaths to the breaking of which the law does attach a penalty.

1. Of the first class are (1.) oaths of allegiance, and (2.) oaths of fidelity in the discharge of duties.

(1.) As to the oaths of allegiance the dissentients with significant brevity state, that—

"In peaceful and prosperous times they are not needed; in times of difficulty and danger they are not observed. Contemporary history affords

* Greenleaf Ev. § 370.

† Rochdale Co. Ct., Feb. 1861.

‡ Her mother was the defendant; she had neglected the religious instruction of her daughter, and thus took advantage of her own wrong.

* Best Ev. § 56.

† *Omichund v. Barker*.