SWEARING.

[COMMUNICATED.]

(Continued from p. 145.)

So much for the mere form, which philosophy and reason concur in asserting to be immaterial to the efficacy of an oath. "Forma jusjurandi," writes Grotius, "verbis differt: re convenit," and on a far greater authority, that of the Saviour: "Who swears by the temple, swears by the God who inhabits it." "All that is necessary to an oath is an appeal to the Supreme Being, as thinking him the rewarder of truth and avenger of falsehood," said Lord Hardwicke, in his famous judgment in *Omichund* v. *Barker*, 1 Atk. 21, 48; Willes, 535, 545, and he goes on to quote Dr. Tillotson; "As for the ceremonies in use among us in the taking of oaths, they are not found in Scripture, for this was always matter of liberty, and several nations have used several rites and ceremonies in their oaths." We commend to all magistrates whose strict Protestantism may possibly obscure their mental vision, these closing words of the great Chancellor: "This course (*i. e.*, administering such oaths as are agreeable to the religious notions of the person taking them) does not in the slightest degree affect the conscience of the persons administering the oath, *and is no adoption by them of the religion conformed to by one of its votaries.*"

In the same way does the learned Puffendorf explain the nature of an oath: "Whatever name you give it, it is quite certain that an oath proceeds from the faith and conviction of the swearer, and it is useless unless one believe that the God whom he invokes is able to punish him for perjury:" 8 Puff. lib. 4, cap. 2, sec. 4; Bynkershoek Obs. Jur. Rom. lib. 6, cap. 2. And finally, the dictum of Heineccius, on the Paudicts, exactly meets the London case: "Since it is a religious asseveration, it is quite clear that the oath should be made conformable to each man's religious belief:" Hein. ad Pand. p. 3, ss. 13, 15.

In England, in earlier times, before she had widely extended her empire and her intercourse with the outer world, few cases would have been likely to arise in which it was necessary to consider the admissibility of the testimony of an alien or an infidel. The Jews were almost the only persons in the kingdom who could neither be commanded nor permitted to take the oath prescribed for Christians. Their case, accordingly, seems always to be had in view by the old jurists who turn their reflections to the matter. Yet we are told that no private cause requiring the evidence of a Jew arose before the Restoration. The Jews were banished from England in the 18th year of Edward I., and they began to return during the protectorate of Cromwell, having, indeed, previously sent over some influential men of their race to discover if Oliver were the Messiah. Hale, observing on the inconvenience that might often be experienced in cases of foreign contracts, most of which were transacted by Jewish brokers, distinctly laid down that the regular oath might be dispensed with in cases of necessity, and that an oath on the books of Moses should be accepted. He further pointed out that the oaths of idolatrous infidels were admitted in many countries, and in Spain particularly, special laws of relief touching them were enacted.

The reported cases, in which Jews, Turks, infidels or heretics were accepted as witnesses, are few: it is impossible to say in how many they were rejected. The probability is, that in those times, when religion was tainted with bigotry, and non-conformity was looked upon as a crime, the opinion of most men was that of Lord Coke, who, narrowly defining an oath (derived from Sax. *Eoth*) to be "an affirmation or denial by any *Christian*," insists that "a new oath cannot be imposed on any subject without authority of Parliament, but the giving of every oath must be warranted by Act of Parliament." And again: "None can examine witnesses in a new manner, or give an oath in a new case, without an Act of Parliament." (Coke, 2nd Inst. 479.) We may draw conclusions not over-flattering to the liberality of our ancestors from the preamble to the statute 7 & 8 Wm. III. cap. 34, for the relief of Quakers and Separatists, which recites that "They (the Quakers, &c.) were frequently imprisoned and their estates sequestered by process of contempt, issuing out of such Courts, to the ruin of themselves and families."

But the unjust and irrational theory, that in courts of justice no man should be thought capable of speaking the truth who did not go through a certain ceremony prescribed by an English statute, was forever cast down by the decision in *Omichund* v. *Barker*. The question there was whether the depositions of two gentlemen, subjects of the Great Mogul, rejoicing in the musical names of Ramkissenseat and Ramchurnecooberage respectively,