

Q U A K E R S.

1698. *January 18.* SAMUEL TELFAIR *against* BARTHOLOMEW GIBSON.

SAMEUL TELFAIR pursues Bartholomew Gibson, the horse-ferrier at the Abbey, for making furthcoming some horses of the Earl of Eglinton's he had arrested in his hands; and referred the libel to his oath. Bartholomew, being a Quaker, offered to declare the truth as in the presence of God, conform to the custom of these sectaries, but refused to hold up his hands, or depone in the usual terms, by God. This being objected against as contrary to the fixed law and consuetude of this kingdom, whereby a set *formula jurisjurandi* was prescribed, and all behoved to follow that method; else Papists might pretend they cannot in conscience depone, but laying their hands on the Canon of the Mass, and by the Virgin Mary; and this were to encourage men in their superstitions and delusions, and put them in a better case than the Orthodox Protestants, and to harden and indulge them in their humorous peevishness;—*answered*, The form they are content to declare in is, materially, an oath, and so binding, that if it can be redargued as false, they stand liable to perjury, and so punishable; and both Holland (where they called *Memnonistæ*) and England accept of their declarations in judgment in the terms now offered; and if they shall be holden as confessed for refusing to swear, it is in the power of a malicious pursuer to ruin them by referring a debt of 20,000 or 40,000 merks to their oaths; and in Scotland, they have been connived at; and in 1680, Burnet, Tutor of Leys, was permitted to depone in that manner; and since the Revolution, Grieve of Pinackle, and others. *Replied*, *Incommodum non solvit argumentum*; and the English found it could not be done without an act of Parliament, which they lately made to that effect. And the examples given of our custom was only where the pursuer consented to accept of his declaration in that manner; and the Lords used to interpose with rigorous per-

No 1.

The Court did not consider themselves entitled to dispense with the form of an oath, where a Quaker was called on to depone, but on refusal, held him as confessed.

No 1.

sons, not to urge their formal deponing, but it would be *pessimi exempli* to authorise it by a decision. THE LORDS wished the pursuer might dispense with the formality of his oath, but, by plurality, found they could not do it; and therefore held him as confessed, if he refused to depone in the legal manner introduced by the laws and customs of this nation. I find, Bouritius De officio judicis, cap. 9. of the same opinion in the case of the Anabaptists, and that the form by which the Jews swear is, by laying their hand on Moses's Decalogue, and repeating the third commandment, non assumes nomen Domini in vanum. Grotius De jure belli et pacis, lib. 2. cap. 13. § 12. De jurejurando, reproves Duarenus for allowing Christian Judges to take the oaths of Pagans and Mahometans in their superstitious manner. But Zieglerus, in his notes and animadversions on Grotius, excuses Duaren, and shews cases where the public good of discovering some actions may plead for that dispensation. See a parallel case, apud Anneæum Robert. Rer. judicat. lib. 1. c. 11.

Fol. Dic. v. 2. p. 294. Fountainhall, v. 1. p. 813.

1707. *March 20.*

Mr EDGERT and ABRAHAM EDINS Merchants in Rotterdam, and PATRICK HOME Writer to the Signet their factor *against* ROBERT HUNTER Merchant in Edinburgh.

No 2.

A declaration upon faith and honesty, given in Holland, by Anabaptists, (whose religion does not allow them to take an oath) sustained as equivalent to an oath.

Mr ABRAHAM and Edgert Edins and their factor having pursued before the Sheriffs of Edinburgh Robert Hunter merchant there, for payment of 430 gilders as the balance resting for some goods sent to him in the year 1696, he offered to prove by the pursuers' oaths, that the foresaid goods were sent to him to be sold and disposed of on their risk, which he had done, and a part of the price could not be recovered, by the buyer's proving insolvent; which ought to be allowed, Upon which a commission being granted to Alexander Carstairs, factor at Rotterdam, to take the oaths of Messrs Edins, who are Anabaptists; they first made faith before the Skepin in Rotterdam, and then before Mr Carstairs, declaring upon faith and honesty (their religion not permitting them to take an oath) that they gave no orders to the defender to sell the goods. Which commission being reported to the Sheriffs, and advised, they found it not proved that the defender was authorised to dispose of the goods, and therefore decerned. Mr Hunter, when charged on the Sheriffs' decret, suspended for this reason, that the Sheriffs had committed iniquity in sustaining the chargers' declarations upon faith and honesty in place of depositions upon a point referred by the suspender to their oaths; because, *1mo*, This is inconsistent with the commission, which only gave warrant to report the chargers' oath; *2do*, It is expressly contrary to the laws of this nation, which dispense not with the oaths of any person, whatever opinion they may be of;