

Monergism

THE OBLIGATION OF OATHS

SEVEN LECTURES CONCERNING THE
OBLIGATION OF PROMISSORY OATHS

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Seven Lectures concerning the Obligation of Promissory Oaths.

Read publicly in the Divinity School at Oxford.

By Robert Sanderson

His Majesties Public Professor there.

Translated into English by His late Majesties special Command, and afterwards Revised and approved under His Majesties own hand.

London, Printed by E. C. for Humphrey Moseley, Octavian Pulleyn, and Andrew Crook and are to be sold at their shops in St. Paul's-Church-yard 1655.

This text has been initially updated from EEBO-TCP by Project Puritas (Logan West, David Jonescove, Alex Sarrouf)
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To the Reader

Should I tell thee no more but the Authors Name, and by whose Command this Book was made English, 'twere sufficient Commendation; But (because I intend not to waste many words) know, that whether thou be a Ruler, or a Subject, Single, or Married, this Book will concern thee; Since thou canst not make any Oath, Promise, or Stipulation, (and thou canst not quietly live without them) but mayst here read how far thou standest obliged; So that whether thou lovest thy own conscience, or thy Neighbors, the Author, (and perhaps the Translator have here done thee a courtesy.

Farewell.

The First Lecture.

Containing the various Definitions of Oaths.

If a man vow a vow unto the Lord, or swear an oath to bind his soul with a Bond, he shall not break his word, he shall do according to all that proceedeth out of his mouth. - NUMB. 30.

2.

SECT. I. The things to be handled proposed.

I Shall handle this matter with the more expedition, and your better profit, (as I conceive) if in the very entrance I lay before your eyes as

it were a general Map of my future discourse; for so both you may better understand my design, and I more certainly bound my speech; that I may either contain it within the due compass, or if it chance to start out a little, it do not so loosely wander, but that it may be maturely brought in order, and reduced unto the point. I shall therefore deliver the whole matter under three heads.

First, That it may be the better understood of what I speak, I will show what an Oath is in general, what a Promissory Oath is in particular, and what Obligation.

Then because the determination of uncertain things is to be drawn from such as are certain, I shall propose certain axioms or general rules, derived from the fountains of natural Law, and confirmed by general consent, as Hypotheses, and Touch-stones of the future disquisition, from whence the decisions of particular cases are to be deduced, and to which they are to be brought as unto their rules and Canons. These two necessarily premised, of which one will give light to that which is to be spoken, the other strength and foundation: I shall come in the third place to salve those doubts, which may have any difficulty in them worthy of debate, or may serve to cast any scruple into the minds and consciences of pious men: which as it is the principal part of the whole work, and by far the largest, I shall endeavor to bring all the variety of Cases into certain Classes, and that according to the four kinds of Causes so far as it concerns the bond of obligation; reserving to the conclusion of the work, both those things which appertain to the solution of that bond, and any other which I shall either find to have been omitted in their due place, or judge fit for the better regulation of life, and Conscience, to be annexed.

SECT. II. The definition of an oath.

THE draught of the whole future treaty thus delineated as in a map, now I betake myself to the matter. Where first is to be explained what an Oath is. I shall not need to insist upon the name, and the defining thereof: for the ill custom of swearing is grown to that pass, and the familiar abuse of this so sacred a thing is such in these debauched times, that it can be unknown to no man, nay not unto children, what an Oath is. Authors (as the manner is) variously express the definition of the thing itself, according to their particular fancies. That of Cicero is the most concise, An Oath, saith he, is a religious affirmation. Where by the way I both admire and am angry at the forward youths of this age, who I know not out of what erroneous prejudice, but I am confident, to their own great hurt, avoid Cicero, as a writer of too much prolixity. But I return: if any man desire a fuller definition of an oath, let him take this, An Oath is a religious act, by which God is called to witness for the confirmation of some matter in doubt. Every member of this definition I shall particularly explain.

SECT. III. An Oath is a Religious Act.

First, I say it is a religious act. Act is put as the Genus; for though an Oath be properly in the Predicament of Relation, yet because the relative respect which is in an oath is founded upon the act of the party swearing, it is not for that reason impertinently defined by such an act; for as much as in the definition of Relatives, the matter or ground of that relation is usually put in for the Genus. Now that it is a religious Act, is manifest, first, by the authority of Scripture, Deut. 6. 13. Thou shalt fear the Lord thy God, and serve him, and swear by his name. From which place the Schoolmen unanimously

conclude, that an Oath is (to use their term) *Cultus latriae*, that is, an act of such holy worship as is due unto God alone.

Secondly, It is manifest by the consent of all Nations, amongst whom as led by one light of nature, the religion of an oath hath been ever held most sacred; insomuch that the very words, Sanctity, Religion, and others of like sense, are scarce in any other so frequently used amongst Heathen writers, as in this matter of Oaths; and though they had many rites amongst them, which they held sacred, yet to an Oath only, for no other cause then that it was in a manner the most holy of their holy things, remained as peculiar right by the name of Sacrament. From whence that name passed afterwards into the Church, from some similitude with the military Sacrament of the Romans, yet to signify some other things. The French also at this day framing the Latin word *Sacramentum* unto their pronounciation call an oath, *Unserement*.

Thirdly, it is manifest from most evident Reason: because an Oath tends to the honor of God as being an acknowledgement of his truth, wisdom, justice, and divine power. For although a false oath, or an oath lightly, rashly, or otherwise unduly taken, discover a certain irreverence to, or rather contempt of God in the party swearing, and savor too much of Atheism: the act nevertheless of swearing in its own nature implies a reverence of the divine Name. For since every oath is made for confirmation of that which is avouched by the party swearing; and all confirmation ought to be made by something that is most certain, and of greater authority, (Heb. 6. Men verily swear by the greater:) He who swears, *ipso facto* acknowledgeth God to be his superior, a witness of the highest authority; of infallible truth, the searcher of hearts, and the most just, and powerful punisher of all perjury and falsehood. An oath therefore is a religious act.

SECT. IV. In an Oath God is called to witness.

Secondly, I say, In which God is called witness. Wherein are these three things; God called, as a witness, and by way of invocation. In all oaths God is chiefly called; for although there was a solemnity heretofore amongst Heathens, Jews, and Christians of swearing either by Creatures, or at least in swearing not to express the name of God, but the names of creatures only, as might if need were be proved by infinite testimonies drawn both from Scripture, and other authors, (to dispute which two things, whether they be, or how far they may be lawful, is not to the present purpose) yet in every oath which is truly and formally an oath, the testimony of God is either explicitly, or implicitly used; for both he who sweareth by idols, which indeed are nothing, 1 Cor. 8. 4. and Jer. 5. 6, are no God's, swears by those he thinks to be God's: and he who swears by any creature, doth that in some sort in order and relation unto God, because he calleth the creature to witness, as it were something of God, that is to say, in which the truth, goodness, and power of God appeareth, and which he both acknowledgeth that by the mercy of God he enjoyeth, and would be loath by the justice of God to be deprived of For example; if a man swear by his life, by his soul, by his head, by his salvation, &c. it is as much as if he should say, by that God to whom I owe my life, my soul, my head, from whom I expect salvation, &c. And in this particular is the difference between an Oath, and bare assertion or promise, which two men make without any interposition of the divine Name, either express or tacit. Now in that God is called to witness, therein an oath is distinguished from a Vow; for in a Vow God himself is contracted withal as a party, to whom vows are immediately addressed. But man is contracted withal in an oath, and God brought in not as a party, but witness. Now in

the definition I have said God to be witness simply and precisely, not a judge and revenger; which nevertheless is added by some indeed truly, but perhaps not necessarily; and no superfluous thing should be brought into a definition. I confess he who swears doth both adduce God witness of truth, and avenger of falsehood; but that primarily, and perse, this secondarily, and by consequence. For that God be witness unto truth, appertaineth simply to the nature of testimony: but that he punish falsehood, concerns not so much the nature of testimony, as the effect. But neither is it sufficient unto an oath, that God be made the witness, except he be also invocated; for God may be brought a witness, and that for the confirmation of a doubtful thing too, even without an oath. As if for the confirmation of this Thesis, Images are not to be adored, I should allege some places out of Scripture; certainly this were to adduce the testimony of God for confirmation of a thing in doubt, and yet as certainly this were no oath; for it is quite another matter to cite God a witness in respect of a testimony already given, which may be done without invocation; and to invoke God a witness with respect unto a testimony now to be exhibited, wherein the formality of an oath consisteth.

SECT. V. The matter of an Oath is something in doubt.

Thirdly, I said, and it is the last member of the definition, that God is invoked a witness for the confirmation of some matter in doubt. In which words is contained both the end, and matter, or object of the oath. The *materia circa quam*, or object of an oath, is a Doubtful thing; that is, whose certitude so depends upon the credit of the speaker, that it can be no other way conveniently found out. Wherefore first, the Scibilia, of which kind universal things be, which are ever certain and like themselves, nor can be otherwise; Secondly,

particular things which rest upon the testimony of sense, which are either so clear and certain in History, universal tradition, or other public testimony, free from all suspicion of falsehood, that they can leave no occasion of doubt with men of sound minds; are no fit matter for oaths. For how ridiculous were it, and unbeseeming a sober man to confirm by an oath, that a triangle hath three Angles; or that virtue is desirable for itself; or that Aristotle was a Philosopher; or that Cicero an Orator; or that a youth disputing in the Schools, and being to prove a proposition denied, should lay arguments aside, and swear it to be true? Wherefore particular things, such as are facts of peculiar persons with their circumstances, which for the various chances, and contingencies whereunto they are obnoxious, are so mutable, and doubtful, that no certainty thereof can be had by way of demonstration, or other, except that which depends upon the credit of men: are those things, unto the confirmation whereof, oaths are properly of use: which the Apostle intimates in that Heb. 6. An oath is the end of all contradiction. As if he should say, an oath is there to take place where there is no end of contradiction; one, imagine the Plaintiff, affirming; the other, imagine the Defendant, denying: except by the interposition of an oath, one part of contradiction being confirmed, the other part cease, and the whole strife be determined.

SECT. VI. The end of an Oath is credit.

And this Confirmation (the Apostle in the place mentioned calls it <H&G>) is the true end of an oath. For since particular things would be uncertain, and through their contingency doubtful, nor could be proved but by witnesses, and all human testimony would be infirm and fallible, especially through two defects; one of knowledge, (for

we are ignorant of very much) the other of conscience, (every man being a liar) and yet it would make for men's convenience that the things in controversy amongst them, and mutually debated, should be reduced to some certainty, without which there would be amongst men no faith, nor justice, which are the most firm bonds of human society; there lieth a necessity of flying to the testimony of God, who can neither deceive nor be deceived. And thus oaths are received by all nations from divine institution, or the law of nature, as a fit remedy for this disease. In the judgment of all men, <H&G>, saith Diodorus Siculus, and Dionysius Halicarnassensis, <H&G>: And the Apostle greater, and more elegantly then, both <H&G>, an end of all strife, Heb. 6. When we arrive once at this point, Ne plus ultra; all human dispute and contradiction must rest here. Not that everything confirmed by an oath is simply certain (for then there would be no perjury, which alas is too common) but because in this condition of mortality (wherein it seemeth unto divine wisdom profitable for mankind that they should be conversant with much obscurity and uncertainty of things, to the end that their minds may be raised unto the things above which are more certain) there can be no greater human faith then that which in an oath, by the invocation of the name of God, is as it were attested and confirmed from heaven.

SECT. VII. The definition given, containeth all the four kinds of Causes.

IN this definition of an Oath examined as you have heard, are in some sort contained all the causes of oaths. That first member in which it is said to be a religious Act, to wit, of him who sweareth, necessarily includeth the will of the Agent, that is to say, of the party swearing; (seeing every man is a free agent, and every human act

voluntary) as the primary Efficient cause. The second member expresseth the Formal cause of an oath, which is the attestation of the divine Name, or invocation of God as a witness. The third member contains the other two causes, to wit, the Material and Final. For the proper Matter of an Oath is the thing in doubt; that is, the truth whereof is not sufficiently confirmed to him, before whom it is pleaded, by the bare testimony of the assertor; and the proper Final cause of an oath is, that a doubtful matter may have that certainty through invocation of divine testimony, then which no greater can be had in the contingency of human affairs. This which I have said, Auditors, is to the end it may render me the more excusable unto you for the prolixity I have used in explaining the definition of an Oath. Because when with the help of God I come to state dubious cases, which I intend to do with respect unto the four kinds of causes, I doubt not but you will then easily perceive, how profitable it will be to the studious, and advantageous unto my purpose, to have had a foreknowledge of these things, which concerning the nature of oaths have been by me so largely handled.

SECT. VIII. Oaths assertory and promissory.

But thus much of Oaths in general, what a Promissory Oath is in particular comes in the next place, but more briefly to be explained. Sundry divisions and distinctions of oaths according to the diversities they respect are extant in Divines and Lawyers: by some they are divided into Judicial and Extrajudicial; by some into public, and private; into simple, and solemn; into naked, and execratory; into absolute, and conditional; by others, otherwise. But the noblest of all, and that which (as I remember) is not by any of them who have written of oaths, omitted, is that whereby they are distinguished into

Assertory and Promissory. For whereas in every oath (as hath been said) the name of God is taken by the party swearing by way of invocation unto the testimony of some doubtful matter, it is to be observed, that this may be done three ways. For a past matter may be doubted whether it were so, or not so: as, did you see Gaius yesterday in the marketplace or no? Or a present one, whether it be so or not; as, have you the money I left in your hands, or have you it not? Or a future one, whether it will be so or not: as, will you lend me an hundred pound tomorrow, or will you not? So often therefore as God by an oath is invoked witness to a thing past or present, such an oath is usually called Assertory; Because the party swearing without any promise for the future, only asserts the thing to have been, or to be as he then sweareth. But if God by the interposition of an oath be invoked witness to a future thing, that oath is called Promissory, because the party swearing promiseth to perform something, or not to perform it hereafter. The chief use of the Assertory is in judicature to determine suits, especially upon the question of fact. There is small use of the Promissory in judicature, but very much in promises, bargains, contracts. Many examples of this kind of oath are found in sacred story, and elsewhere. The servant of Abraham devoutly sweareth faithfully to observe his Lord's commands in the choice of a wife for his masters son. Joshua and the princes of the people of Israel swear, but inconsiderately, to observe the League with the Gibeonites. King Herod sware, but very rashly, to give unto the daughter of Herodias whatsoever she should ask.

SECT. IX. Oaths Comminatory.

Furthermore it is to be advertised, that under the title of an oath Promissory, is also comprehended the Comminatory; such as was the

rash oath of David for the destruction of Nabal, and the impious one of certain Jews, who vowed that they would neither eat nor drink till they had killed Paul. These and such like are not properly Promises, which word seems rather to signify something that may be grateful unto another, but by a kind of Synecdoche joined with a Catachresis (which as it is otherwise familiar amongst good Authors, so especially in words which respect some future thing; as sperare for timere, and the like) the name of Promises may Metaleptically be extended to Commination's. So God's Oath, whereby he sware in his wrath that the Israelites, who had tempted him with divers provocations in the wilderness, should not enter into his rest, may and useth no less to be called promissory (though not so properly) then the other of his whereby he sware unto their fathers that he would give them the land of Canaan for an heritage.

SECT. X. Oaths Execratory.

Neither is it material to the nature or effect of a promissory oath, whether the oath be barely expressed, or with an execration added; for although there be some of the Schoolmen, unto whom that oath which is made by a simple calling to witness, seems to differ in specie, from that which is done with an execration added, they being induced unto that opinion for this reason, that God is invoked by that as a witness, by this as a judge; yet if we more attentively consider the matter, we shall find by what hath been said, that they come both to one. For every oath in what manner soever uttered, whether barely, or with execration, either expressly, or at the least implicitly, invoketh God both as a Witness and Judge, but primarily and perse as a Witness; secondarily and consequently as a Judge; and that is the most explicate form of an oath, whereby God is both explicitly

called to witness, and whereunto an execration, or imprecation is annexed: as if a man should swear thus, I call God to witness, who confound me if I do it not, that I will do this or that. But ordinarily either this or that part is omitted, and oaths are more succinctly given, as by those examples in holy Scripture where God is introduced swearing after the manner of men, is sufficiently manifest. There you may find God swearing sometime by a simple attestation without any execration, as in these, As I live, saith the Lord, I have worn by myself, by my holiness, &c. sometimes without any attestation, by an execration only, but that too, (for the honor and reverence of so great a Majesty, and after the manner of men almost suppressing by an Aposiopesis, words of ill omen) elliptically and diminutely uttered; as in that of the Psalm, I swear in my wrath, if they enter into my rest. This in the meantime seemeth certain, that every promissory oath under what form soever conceived, brief, or large, so it be an oath, and no mere Asseveration or Obtestation, virtually containeth both, that is to say, Attestation, and Execration. For in an oath both Execration supposeth Attestation as a thing before it in nature, and Attestation inferreth Execration as its necessary consequent. That of Plutarch is pithy. <H&G>, Every Oath concudeth with a curse of perjury. And thus much for the nature of a Promissory Oath.

SECT. XI. The definition and distinction of Obligation.

It remains that in the last place I add something of the nature and force of Obligation. Of obligation Lawyers say much and with prolixity enough: they define it to be a Bond of Law, whereby a man is bound to pay that which he oweth. Which definition will be no less fit to explain those things which are internal, and appertain unto the

Court of Conscience, then those which are external, and appertain to the Court of Judicature, whether in Church or in Common-wealth; if the term of Law be not restrained to that which is human, and positive only, but so extended, as it take in also universal Law divine and natural. Now since every obligatory Bond, as may be gathered from the definition, derives itself from some Law, as the Law is twofold, the one part divine and natural, the other civil and human; so the bond or obligation arising from thence is also twofold; to wit, the natural Bond which obligeth naturally, and in foro externo, by the virtue of divine Law; and the civil Bond which obligeth civilly, and in foro externo, by virtue of human Law. Some call that the obligation of equity, this the obligation of justice; whether properly or improperly, I dispute not: for where we agree in the thing, to what purpose were it to contend about the terms? But whereas they add a third kind of Obligation, compounded of the former two, that certainly is not very convenient, or at the least not necessary: For if a man be bound to the performance of the same duty (as for example, to feed his aged parents) both by natural Law, and Civil; this would be no new species of obligation mixed of the other two, but rather two obligations conjoined, both in the subject, and object, (in the subject, for as much as they bind the same person; and in the object, forasmuch as they bind unto the same duty) and yet naturally and originally distinct. The reason is manifest, for things cannot by their mixture produce a new species, without some real immutation of themselves. Whence Aristotle defines Mision, Misoibilium alteratorum unionem. For in all mision there must be alteration, and every alteration is a real mutation, as appears in the generation of mixed bodies out of the four elements, not entire, but broken, and altered. But where a new obligation is added unto a former one, as in this case, the civil to the natural, no real mutation is made of either. But the former obligation remains in the same state it was in before the accession of the new and latter. But I will not stay upon these

subtleties. In the matter of oaths we consider the Moral, or Natural obligation only, or at the least especially; the other, the Civil we leave to Lawyers.

SECT. XII. Obligation to guilt and to punishment.

Besides that distinction of obligation, which ariseth from its Original, in relation unto the Law whence it deriveth: there is yet another, taken from the Object in relation unto the Debt to be paid, at which obligation aimeth, and whereunto it is carried. Now debts are twofold. *Debitum officii*, according unto which every man is bound, by the precept of the Law to act: and *Debitum supplicii*, according to which every man is bound by the decree of the Law to suffer if he neglect his duty. In the former sense we say that the mutual exercise of Charity is a debt, because the Law of God enjoins it, according to that Rom. 13. 8. Owe no man anything, but to love one another. In the latter sense we say, that sins are debts, as in the Lord's Prayer, Forgive us our debts, and that external death is a debt, according to that Rom. 6. 23. The wages of sin is death. Nevertheless it's to be observed, that the latter debt is contracted by non-payment of the former. So that if a man fully disengage his *debitum officii*, by obeying what the Law commandeth, he remaineth not bound *debito supplicii*, to suffer that which the Law denounceth. To this twofold debt answereth a twofold obligation, of the very same denomination, to wit, obligation *ad officium*, to the performance of duty; and obligation *ad supplicium*, to the sufferance of punishment; or according to the usual terms, which comes all to one, obligation to guilt, and obligation to punishment. But so as the former be in the intention of the Law, as it is in its own nature, chief and preferred before the latter; for it is the part of a Tyrant, not of the Law,

otherwise to inflict punishment then in relation to guilt: and that speech of the Apostle is true even in this sense, though perhaps more rightly to be understood in another, The Law is not made for a righteous man. The Law therefore intendeth primarily, directly, perse, and simply, to oblige unto duty, and obedience. But unto chastisement and punishment, it obligeth only secondarily, indirectly, consequently, and ex hypothesi, that is to say, supposing the neglect or contempt of duty. The Apostle seemeth to have joined both these obligations together, in Rom. 13, where he speaks of the subjection due unto the Sovereign power, Ye must needs (saith he) be subject not only for wrath, but also for conscience sake: from which words I gather three things of concernment to my present intention. The first is, that we may be bound by a double bond to the performance of one and the same thing; by the bond of duty, and the bond of punishment; for this is implied in the words of conscience and wrath. The second, that the conscience of duty ought with all good men to be valued, and preferred before the fear of punishment. The third, that the obligation of conscience ariseth precisely out of the debt of duty. Whence also it is manifest, that we, when we speak of the obligation of oaths, as it concerneth conscience, are primarily and especially to be understood of the obligation which binds us to the performance of Duty, not of that whereby we are bound to suffer the punishment due unto perjury.

SECT. XIII. An Oath is in the nature of it Obligatory.

These two distinctions of Obligations laid, it is forth more to be understood, that every oath is in its own nature binding: insomuch, as if a man should swear without any intention to oblige himself, nay although he should swear with an intention not to oblige himself;

nevertheless, the oath taken, he becomes ipso facto obliged, as in its place (if it please God that I go so far) I shall more fully show. Cicero saith right, Our Ancestors would have no bond for the obligation of faith, stricter than that of an oath. But what could be more clearly said in this matter, then that which Moses says in the text? If a man vow a vow unto the Lord, or swear an oath to bind his soul with a bond: where that gemination after the manner of the Hebrews, hath much emphasis, and fortifies the signification of the words: As in multiplying I will multiply; and in blessing I will bless: that is, I will exceedingly multiply, I will greatly bless: so ligando ligamen, binding with a Bond, that is, strongly binding; as if he should have said, although even a bare promise oblige the conscience, and that with the addition of an asseveration, or obtestation, it oblige more strictly: yet a vow which is made to God, and an oath which is made to men, but with the witness of God, are the strongest of all obligations. Wherefore every oath obligeth the conscience, as well the Assertory, as the Promissory. Of the Promissory, seeing it respecteth the time to come, no man can doubt. But of the Assertory, perhaps not without reason there may be some question made, because all obligation bindeth unto something that is future; but it hath been said before, that the difference of the Assertory Oath from the Promissory consisteth in this, that that respecteth a thing present or past, this a future. But the solution is easy, to wit, that the obligation of an oath qua tale, falleth not primarily upon the object, or matter of Oath; for so an Assertory Oath whose object is something past, or present, could not lay any obligation for the future. But obligation falleth immediately and directly upon the subject, that is the conscience of the swearer, who in both kinds of oath is bound to the performance of some duty for the future.

SECT. XIV. The different obligation of the Assertory, and Promissory.

Which that it may be made more manifest, and that withal it may more clearly appear, what the obligation of a Promissory Oath (which I have undertaken to explain) is, I will do my best to show, what is common to both kinds of Oath, so far as it concerneth the effect of obligation; and what is peculiar unto a Promissory Oath. And first it must be granted, which is in itself so evident, as its contradictory implieth a manifest contradiction, That all obligation to duty respecteth the duty to be performed *de futuro*; that is, at the least some time, though perhaps a very small one, after the obligation contracted. Nor is it hard to be observed, if diligently considered, that this happeneth unto every Oath as well Assertory as Promissory; for whosoever sweareth, obligeth himself *ipso facto*, to manifest the truth in that which he is about to say, whether it be in a matter past, or present, by an Assertory, or in a future matter by a Promissory Oath. And hitherto this obligation is alike common to both kinds; so that if in either of them the words of the party swearing do not agree with his mind, he becometh guilty of the breach of his duty: and thence also by necessary consequence obnoxious unto punishment. But in the Promissory Oath, besides this obligation which falls upon the conscience of the party swearing, and is common to it and the Assertory, *quatenus juramentum*; there is another further obligation proper and peculiar unto it, *quatenus Promissorium*, which falls upon the matter of the Oath: by virtue whereof the Promissory party swearing is bound not only in present to intend to do that which he sweareth, that his words may agree with his mind, but also to endeavor for the future (as much as in him lieth) to fulfill that which he hath sworn, that his deeds may agree with his words; that is, he obligeth himself not only barely to promise that which he really intendeth; but also farther obligeth himself to

perform all that which he hath promised by Oath; which the words of Moses in this verse clearly express, If a man (saith he) vow a vow unto the Lord, or swear an oath to bind his soul with a Bond, he shall not break his word, he shall do according to all that proceedeth out of his mouth. And thus as fully as I ought, and as clearly as I could, I have unfolded unto you my sense upon the first head of this discourse, what an Oath is, what a Promissory Oath, what Obligation. In my next Lecture (with the help of God) I shall proceed unto the rest in the order which I have proposed.

The Second Lecture.

Containing further Definitions, Hypothesis, Simulations, and Perjuries of Oaths.

SECT. I. A Premonition concerning style.

Having explained in the former Lecture, what an Oath is in general, what a Promissory Oath in particular, and what Obligation; I proceed (as I promised) to propose some Preoccupations or Hypotheses fitted for our purpose as foundations, or (if you please) Canons or rules of the whole future discourse; from whence are to be derived, and to which are to be reduced the determinations of most doubts. But before I do this, of one thing by the way, which I go not about to entreat of you, as I should do if I could suspect your savor, or believe the thing in itself unjust; I desire only to premonish you, that it's my resolution, so long as I can find wherewithal to be any way significant in my expression of the matter to be handled, not to labor farther for

words, much less purity of language, and least of all to trouble myself for elegance, I leave that to such as have leisure, and are delighted to take pains for that which is unnecessary. I use to relate amongst my friends not without some sport and laughter, what sweat it cost Paulus Cortesius, a man otherwise not unlearned, to become the more foolish, who whilst following Thomas, and Scotus, and many more, he compiled Commentaries upon the four books of Sentences, growing weary forsooth, of the terms used in the Schools, as less Ciceronian; for Church (Flowers of Rhetoric!) chose rather to say Senate; for Ecclesiastical Laws, Senate-decrees, for predestination presignation, for ordination of Priests, initiation, for Angel Genius, for Bishop flamen, and the like, being all to besprinkled over with such kind of powder. Of this disease also I find Cardinal Peter Bembo, and Sebastian Castalian, somewhat sick with others, but those few and more moderately. We will not, we may not be so elegant. An Orator deserveth pardon, nay ought to be praised, when he is industrious in the choice of his words, if he speak not only aptly and clearly, but also with purity, and ornament, it is his virtue; who sometimes mis-becometh not his flowery Chaplet, and embroidery. But a Philosopher, or Divine, especially in Scholastic Meditations, and knots of controversy, becomes a curious and adorned style, as the laborious Ox would embossed Trappings. The materials upon which we labor, being contented only to be taught, neither requireth ornament, nor will endure it. To be conversant in the Pulpit and in the School is not the same: and it is another thing to have a large field where the fluency of speech may find room, and nourishment, and to be entangled in briars, from which by any means to redeem a man's self without blood and wounds is a great triumph. But why do I trouble myself with these things? If I use such words and expressions as are usual in this kind of discourse, as I must necessarily do; I am less doubtful of your excuse in that, then fearful

that the prolixity of my excuse itself, may stand in need of another pardon: wherefore I leave Oratory, and hast to my Hypotheses.

SECT. II. Hypothesis (1.) Above all things simplicity becometh an oath.

Of which let this be first, Simplicity above all things becometh an Oath. That is to say, such is the nature, and obligation of an oath, as whosoever bindeth himself to the performance of anything by so sacred a bond, is wholly bound by the religion of his oath, both in his mind seriously to intend, and as far as lieth in his power, willingly to endeavor, that he may faithfully perform whatsoever he hath promised, without fraud, deceit, double dealing, or simulation. Cicero, as in most things of this kind, is right in this; What promise soever thou shalt expressly make as in the presence of God, is to be stood unto. He who shall do otherwise, being careless of the real performance of that whereunto he is obliged by an oath, is judged here by Moses, to have broken his word, that is, basely and unworthily to have violated a sacred thing, and such an one as ought not rashly to be profaned, and to be guilty of evident or dissembled perjury. For seeing that there be three sorts of perjury, whereof the first is almost peculiar unto Assertory Oaths, viz. when a man swears that to be true which he either believes to be false, or doubteth at the least whether it be true or no; the other two appertain unto the Promissory, to wit, the second, when a man promiseth that by an oath, which he meaneth not to perform; and the third, when he endeavoreth not to perform that which he promised and intended: as to the guilt of perjury, especially at the Bar of Conscience, it matters not much, which way any of the three be committed, openly or covertly; that being a symptom of a profane, this of a deceitful heart;

both which, except fraud be worthy of a greater hatred, are equally abominable unto the most holy God, who loveth the single in heart, and truth in the inward man. But such as turn aside unto their crooked ways, that is, Hypocrites and deceitful persons, the Lord shall lead them forth with the workers of iniquity, that is, account of them no better than of such as are openly profane and impious.

SECT. III. Simulation, and deceit are repugnant unto simplicity.

Unto this simplicity of Oaths, two kinds of simulation are repugnant: one a parte ante, either preceding or accompanying the act of swearing; the other a parte post, or following the act: of which, though the former be worst, neither is void of perjury. David seemeth to comprehend both in distinct, but parallel places, viz. Psal. 15, and Psal. 24. In one of which to the question, Who shall ascend into the Hill of the Lord? Amongst other things, he maketh this answer, He that hath not sworn deceitfully, that is, who did not swear with an intention to deceive: where all simulation a parte ante, to wit, about the time, and in the act of swearing, is excluded. In the other two a like question, Who shall abide in thy holy tabernacle? Amongst other things, he returns an answer not much different from the former, He that sweareth to his own hurt, and changeth not; that is, who after he had obliged himself by an oath, had rather perform that, though to his great loss which he hath inconveniently sworn, then violate his faith for any worldly profit; where all simulation a parte post is excluded. These things seem to me, either not at all to be thought upon, or not seriously by most men of these times, who unto all, (be it what it will) that is proposed by such as are able to hurt, fear not without difficulty to make a full, and formal oath; nay rather think themselves only wise, and not without some contempt, deride the

simplicity, and vain fears of others, who that they may not hurt their consciences, seek a knot forsooth in a bulrush, and ravel into the forms prescribed by such as can prescribe. In the mean while they rest secure absolving themselves from all guilt, and fear of perjury; and think they have excellently provided for themselves and consciences, if during the act of swearing they can make any shift to defend themselves, either as the Jesuits do with some equivocation, or mental reservation; or by forcing upon the words some subtle, and unnatural interpretation; or after they have sworn they can find some loop-hole or artificial evasion, whereby such art may be used with the oath, that the words remaining, the sense may be eluded with some sophism, and the strength utterly lost. The ancient Christians did not acknowledge this kind of Theology; nor the sounder Heathens this moral Philosophy. Far otherwise out of those Augustine said, they are perjured, who preserving the words deceive the expectation of them to whom they have sworn. And out of these otherwise Cicero, Whatsoever is so sworn, as the mind of him who took the oath may conceive, what ought to be performed, that is to be stood unto.

SECT. IV. Simulation doth not evade perjury (1.)

But that I may not seem to declaim or contend with authority only, I will prove by some reasons, that Perjury is not taken away by either kind of simulation. The first reason. Of those many places of Scripture, out of which singleness of heart, as in all divine worship, so in the duties of our lives, especially in contracts, promises, vows, and oaths is enjoined. The present text, that I may omit others, requireth of him who taketh an oath in express terms, that he do according to all that proceedeth out of his mouth. Ut omnino faciat,

that is, that both at that time he faithfully intend to do, and afterwards to his power faithfully endeavor to do according to all that proceedeth out of his mouth, that is, according to the sense which the words by him uttered, after the common and received manner of speech, bear in the understanding of the Auditors, and not according to that sense which he perhaps during the act of swearing in his secret thoughts reserveth unto himself, and fraudulently intendeth. Whereunto that agreeth which is brought out of Isidorus, With what artifice of words soever a man swear, God who is witness of his conscience, taketh the same as he understandeth it, to whom the oath is made: and not according to the sense which the party sworn, when he begins to repent of the fact, goeth about to invent for fashion sake, as they speak; not fully and sincerely to perform the faith of his oath, as he ought, but that he may after a sort appear unto himself and others to have performed his duty, and with this artifice very warily, and providently to have avoided the crime of perjury.

SECT. V. Simulation doth not evade perjury (2.)

The second Reason is drawn from the example of God himself, who as the Apostle writes, Heb. 6, for this very cause confirmed his promises made unto the faithful by an oath, that he might witness unto them more abundantly, that is, as fully as could possibly be, and so as might leave no place to doubt, the immutability of his counsels in fulfilling of that which he had sworn to perform: and all this, to the end that they who should believe might have a strong consolation, and firm trust in him; which nevertheless they could not have, if it were not impossible for God to lie, or deceive them to whom he had sworn by frustrating their expectation. But he would deceive and frustrate the hope and consolation in him of believers, if either whilst

he sware, he intended not to do as he promised, or afterwards changing his mind, should not perform it in due time, nor after the same sense in which his promises were by them according to the tenor of the words rightly understood. The Lord hath sworn, and will not repent. The Lord hath sworn in truth unto David, he will not turn from it.

SECT. VI. Simulation doth not evade perjury (3.)

The third Reason from the nature of truth, which is first and chief of those three celebrated conditions of an oath extant in the Prophet Jeremy, inculcated by all, and called by the Schoolmen, the three companions of an oath; viz. Truth, Judgment, Justice. To which Truth is repugnant, not only that which is false, but that also which is feigned; not only a bare and evident lie, but a covered one also, howsoever palliated. Certainly whosoever speaketh falsely unto his neighbor, polluteth his speech with a lie: and he hath spoken falsely unto his neighbor, who hath been the occasion of deceiving his neighbor of that hope which he had rationally conceived from his speech. Since therefore by simulation of either kind a Lie is not avoided, if through our fault our neighbor trusting to our words be deceived, surely neither is Perjury avoided, if through our fault he be deceived, by trusting unto our oaths; seeing that Perjury is nothing else but a lie confirmed by an oath. So that Perjury after an oath taken is the very same, that a Lie is in a bare promise.

SECT. VII. Simulation doth not evade perjury (4.)

THE fourth Reason, from the proper end of an Oath: which by that hath been said when we explained the definition of an oath, appeared to be confirmation of a thing in doubt; that is, that as great certainty may be had of things otherwise incertain and depending upon the truth of men, as is possible to be had in human affairs. For an oath is instituted of God by the light of nature for a remedy of human defects in the search of truth, that it might be the last mortal refuge for the defense of Verity, when all other kinds of proof are deficient. But this end would be utterly overthrown, nor could any certain credit be given to men, if it were lawful for the party swearing at his pleasure, so to enervate that which he verbally pronounceth to the end to obtain belief, either by any tacit ambiguity in swearing, or after the oath taken, by any new invented and as it were posthume interpretation, that it lose its whole force, and become altogether ineffectual. If either of these were lawful, an oath would not be the end of all contradiction, but the beginning, and rather give occasion of new strifes, and contradictions, then determine old ones. This door once opened, what can be imagined so false, for the defense whereof some kind of at least diversion or subterfuge might not be found out, whereby it might be delivered from the lie? In the meantime how great a perversity is this, that what the wise God hath ordained for an aide of truth, should by impious man be turned into an instrument of falsehood? Verily unless men had rather use the sacred ordinance of God to other ends, then that for which it was ordained (as a pious man can hardly do) that which is the end of an oath ought likewise to be his end who taketh an oath; now that is to give such assurance unto the hearer, that he may become more secure, and certain of the truth of a matter which was before in doubt. But he who dissembleth, goes about to possess the auditors with a false belief, and so not only suffereth others to be deceived, (which nevertheless seeing it might and ought to be hindered is against Charity) but intendeth also to deceive them, which besides

that it is against all justice and honesty, is joined with high indignity to God, and contempt of his holy name. And to my understanding, scarce any kind of perjury seemeth to be more diametrically opposed to the scope of the third precept in the Decalogue, or to those very words, Thou shalt not take the name of the Lord thy God in vain, then that which ariseth out of this simulation. For the word Vanity, to speak properly and adequately, as it taketh in all that is any way false, so in a kind of peculiar manner, and most properly, it signifieth that which is false in such a manner, as beareth some show of truth; so that if a man would express by a definition, the nature and essence of Vanity, (though it be *ens rationis* only, and hath no true essence) yet by analogy with *ens reale*, he could not do it better, then by framing an Idea his imagination compounded of Nothing as the Matter, and of a Lie as the Form. Thus Hope which feeds itself with a lie, and is at the length frustrated, and brought to nothing, is Vain hope. And to the present point, he who promiseth anything to come certainly to pass, taketh the name of God for the confirmation of truth, which nevertheless comes all to nothing, that either not intended or not performed which he promised; the same directly, and to the letter, taketh the name of God in vain, violateth God's Commandment, and is guilty of the heinous crime of perjury. And thus you have a sufficient confirmation of the first Hypothesis, concerning the Simplicity of oaths.

SECT. VIII. Hypothesis (2.) An oath is *stricti Juris*.

The second follows, which is of kin to this, and appertaineth to the right interpretation of an oath; briefly it is this, The obligation of an oath is *stricti juris*. I understand here *jus strictum*, not in that sense wherein it occurreth so often amongst Lawyers, for the rigor of the

Law, which is opposed to equity, to wit, by which judgment is turned into wormwood, and which is for the most part so interwoven with injury, that it is almost become a proverb, *Summum jus, summa injuria*. But somewhat more mildly for so just an interpretation of the Law, and so circumscribed to her bounds, that the words of the Law be not stretched farther then is fit by way of complacence or favor to any party; or forced to serve any man's turn or profit. In a word, *strictum jus* is here so taken, as may not exclude the interpretation of Law, tempered with equity; but excludeth the interpretation of the Law corrupted with favor. Now seeing to interpret, is nothing else but to expound a thing wherein there lieth some ambiguity or obscurity; it is to be understood, that a threefold interpretation or exposition may be given of the same thing. Rigid, Favourable, Just; Rigid and favorable are the extremes: and, as most extremes be, vicious. And as there is for the most part a certain coincidence of extremes, but so unhappy an one, seeing they recede both ways from the medium, that they ever meet in that which is ill; and for the most part in that which is worst; too rigid and too favorable an interpretation of the Law meet in this, that each of them by an unjust acceptation of persons, offereth in a manner violence unto the Law, wracking it with too subtle an exposition to the ease of one party, and grievance of the other; but with this difference, that he who is animated with hatred to the parties, presseth the more rigid interpretation; and he who is led with affection, followeth the more favorable. But a mean between both, and just interpretation, is that which without respect of persons investigateth the true and genuine sense of the Law, out of natural equity and justice, and the words themselves, as far as they agree with equity and justice. And this, if out of the words it may sufficiently appear, is in all cases exactly to be followed. But because it may happen, and often happeneth, that controversies arise about the proper and natural sense of Laws, and other matters which need interpretations; where

for the dubiousness of the thing a just interpretation is not to be had, of necessity we must allow unto this mediocrity (as I may call it) her prudential Latitude. As the Ethics say that the mediocrity of virtue consisteth not in an indivisible point, or Arithmetical proportion, but in a Geometrical. In a Law therefore which is doubtful, now a stricter, now a milder interpretation according to the nature of the thing in question, supplieth the place of a just interpretation: whereof the strict, being remoter from the favorable, comes nearer to the rigid; and the mild being nearer to the favorable, declines the more from the rigid. As in the Morals, that virtue which is the mean between Covetousness, and Prodigality, the more remote it be from either extreme is called Liberality, or Frugality. There are therefore some things so ordained by nature, that they require as due, the allowance of a milder interpretation, to wit, such a one, as may not be bound up in the straightness of words, but left more at liberty (to use Cicero 's term) cum quodam laxamento: such for example is res testamentaria in our Law. So by the rule of charity, the words and deeds of others, especially of Princes, Parents, and other rulers, the writings also of pious, and learned men (unless there lie very just cause of suspicion to the contrary) are to be handled with a mild interpretation, according to the usual saying, Doubtful things are to be interpreted in the better sense. But there are divers other matters, as Privileges, Deeds of contracts about debt, and most of those things which bind legally, and amongst them Oaths: in which when question is made of the true sense, it is much better, and more suitable unto the nature of the thing to use the stricter, then the milder interpretation.

SECT. IX. The interpretation of an Oath, ought not to be too loose.

When I say therefore that an oath is *stricti juris*, that must be thus understood, the sense of an oath where it is sufficiently manifest in the words, is exactly to be stood unto: but where the sense is doubtful, we must take diligent heed, lest we be too indulgent unto ourselves and our own affections, or yield unto ourselves too free, and loose a license of interpretation, whereby we may become exempt from the bond of the oath in which we are bound; as also that for our own interest, and profit sake, we impose not upon the oath which we have taken, or any part thereof, other sense than that which any other pious and prudent man (who being unconcerned in the business, is of a freer judgment) may easily gather out of the words themselves. The reason is twofold: one in respect of others, to wit, for the fear of scandal, lest a weaker brother led by our example, think it lawful for him to do as he seeth we have done, though he be ignorant of those subtleties, by which alone we use to absolve ourselves from the crime of perjury. Another in respect of ourselves, for fear of perjury; of which heinous crime we become without question guilty, if that milder interpretation which encouraged us unto the oath, chance to deceive us. And this reason is founded upon the most general, and profitable rule, which in doubtful matters commands the choice of the safer part. But where the words of the oath proposed according to the common and obvious sense of them, seem to contain some unlawful thing, it is safer not to swear, then by a looser interpretation so to work them unto our sense, that we may more securely swear unto them; it being apparent that this kind of oath may be refused without danger of perjury, but not apparent that it may be taken without fear or danger of the same.

SECT. X. All conditions are not to be expressed in an oath.

Nevertheless heed is to be taken on the other side, lest this strict interpretation whereof we speak degenerate into the rigid one. For that which the Lawyers say of Privileges, holds generally in things of like nature, and especially in Oaths, that they are neither too strictly, nor too largely to be interpreted. Wherefore when I say, that an oath is *stricti juris*, I am so to be understood, that therein nevertheless as in every oath, how simply soever taken, and free from exception, all those exceptions and conditions, both may and ought to be presumed which all Laws allow unto an oath, to the end that it may be binding; whereof these that follow are the chief, and those perhaps, to which most of the rest may be reduced. First, it is to be presumed, If God permit, according to that of James, If the Lord will, we will live, and do this or that. Wherefore if Gaius swear unto Titius that he will be at London the fifth of January, and pay the money he oweth him, if he happen at that time to be kept in his bed by sickness, or were robbed of his money by the way; in this case he is not guilty of perjury. The reason is, that all things being subordinate unto divine will, and providence, and no man having power to dispose of all events, he who doth what lieth in his power towards the performance of his promise, hath fulfilled his oath: for seeing that an impossible thing obligeth not, as anon you will hear, every oath is of common right to be understood with this clause, If it please God, or the like. The second thing to be presumed is, As far as is lawful; for an unlawful thing obligeth not. As if a man should swear indefinitely to observe all the Statutes and Customs of a Corporation, he were not thereby obliged to observe any that were not lawful and honest. The third thing to be presumed is, A salvo to superior power. Wherefore if a son swear that he will perform some lawful thing, and his father ignorant thereof lay some other command upon him which hinders the performance of his oath, the son is not obnoxious to the oath: because by divine and natural Law, he is bound to obey his fathers commands. And he who hath sworn not to stir from home, if he be

summoned by a lawful Judge to appear, is bound to go notwithstanding his oath. The reason is, that one man's act ought not to prejudice another man's right. The fourth thing to be presumed is, *Rebus sic stantibus*, that is, if things remain in the same state wherein they now are. Whence he who hath sworn to restore a sword, is not bound to restore it to a mad man. And he who hath sworn to take a woman to wife, is not bound to take her, if he find afterwards that she is with child by another. These and the like conditions, whose reason is clear, are fit in every oath to be presumed, though they be not expressed, and he would be too rigid an interpreter who should go about to exclude any of them. But if any man shall admit more doubtful exceptions and dissonant not only from the words of the oath, but from all right reason, and not approved by common right, or consent of nations; verily he shaketh the very foundations laid by God of an oath, and openeth a large field unto all kind of perjuries, by his rash enterprise. And so we leave our second Hypothesis of the strict interpretation of an oath.

SECT. XI. Hypothesis (3.) An oath maketh not a former obligation void.

Upon which, as also that before of the simplicity of an Oath, I thought good more largely to insist (though many things have fallen into my meditations not unworthy knowledge, which nevertheless for brevity sake I have omitted) both because the clearer interpretation of them seemed unto me very necessary in these most dissolute times, wherein men generally play with oaths, as boys do with Cockals, and that there is very considerable use of these two Hypotheses, in that which with God's help, I am about to say in my future Lectures. The rest I shall more briefly dispatch. The third

Hypothesis; An oath maketh not a former obligation void. An oath hath naturally its obligatory power; but constructive only, not destructive; that is, it may lay an obligation where there was none before, or strengthen one that lay before, but it cannot take away that which it findeth, or impose another which is repugnant unto it. The reason is; because by all obligation some right is conferred upon another, for whosoever is obliged is obliged unto another, and it seems most unjust that by the mere act of one the right of another without his own consent should be weakened. Nor will it make anything to this purpose, whether that obligation we suppose, were natural or acquise. Natural and necessary obligation is that whereby we are bound unto the performance of some duty unto another, which by the Law of nature we owe him in relation to our person, which as I observed in our former Lecture, some call obligation of Equity; because it originally deriveth from the Law of nature, which is both most equal, and the rule of all equity; such is the mutual obligation between the husband and wife, the father and son, the master and servant, the Prince and his subjects. Acquisite and voluntary obligation, which is also called Civil, (by a Synecdoche speciei) and of justice, because it is just that a man should be bound unto that whereunto he hath voluntarily bound himself; is that whereby we are engaged unto the performance of some duty to another, which we owe him by agreement, and virtue of some proper and voluntary act: such is the obligation which arises from promises, vows, oaths, leagues, and other human contracts, and conventions. If therefore an oath be offered unto any man containing anything repugnant unto a former obligation, whether natural, or acquise, as if it be repugnant unto the obedience due unto a Parent, or the Prince, or if it be repugnant unto that which was lawfully sworn, or promised before; such an oath no man can take, or taken, fulfill with a safe conscience: Who doth either of these, is perjured.

SECT. XII. An impossible thing obligeth not.

The fourth Hypothesis follows, which is so evident of itself, that it is a rule of the Law, and needeth no proof. An impossible thing obligeth not. And this is extended unto all kind of impossibility which may happen in matter of Law. Now a thing may be impossible either *per se*, or *per accidens*. *Per se* three ways; First, by a natural impossibility, as for a man to fly, a fish to speak. Secondly, by an impossibility of fact; as for Gaius staying this day at London to meet Titius tomorrow at Venice. Thirdly, by an impossibility of Law; as it is said impossible for a man to do that which he hath no legal power to do; in which sense that ordinary speech is to be understood, *Id tantum possumus, quod jure possumus*. Thus it is impossible for the Major of this City to confer upon any man the degree of Doctor. If a man should swear an impossibility of any of these three kinds, his oath were vain and from the beginning null, and by consequence could not at all oblige him, to endeavor that which he sware, much less to perform it. But the nature of a thing impossible by accident only, is somewhat different. As if a man having sworn to pay a hundred pound within a month, which is not impossible *per se*, be hindered by some unexpected accident, in such sort that he cannot make the sum within the time appointed. Albeit he be not obliged in conscience to the performance of his promise, to wit the payment of the whole debt within the time limited, which is now rendered impossible; nevertheless he is obliged to do what he can, *viz.* to pay as much, and that as soon as he is able. The reason of both is, that because in this case impossibility only impedeth the obligation. The obligation is only so far taken away as the performance is impossible, but in the rest remaineth. And he who cannot pay all he oweth, ought yet to pay all he can.

SECT. XIII. An unlawful thing obligeth not.

The fifth Hypothesis: An unlawful thing obligeth not. An unlawful thing is whatsoever is against any precept of God in the Decalogue, or a virtuous life, whatsoever is repugnant unto our piety towards God, or our charity towards our neighbor, whatsoever is averse to the common good, or peace Ecclesiastical, Political, Domestical; in a word, whatsoever is sinful. Hereunto appertain those common sayings, An oath is not the bond of iniquity. In sinful promises revoke thy faith, &c. The reason is, because every unlawful thing is against duty, but all obligation is to duty. Furthermore, whatsoever is unlawful, is in some sort forbidden by God, (either immediately, or by consequence) but God's prohibition obligeth unto the not doing of that which is forbidden, which obligation a subsequent oath, as appears by the third Hypothesis, cannot make void. Nay, he who hath sworn to do that, which he cannot do without sin, is so far from being obliged unto the performance thereof, that he is rather obliged in no wise to perform the same. But you will say, for a man not to fulfil his oath is perjury: nay verily if the thing be unlawful whereunto thou wert sworn, thou wast then perjured when thou swearest: thou are not perjured, when thou repentest. And therefore to fulfill an unlawful thing because thou hast sworn it, is to heap wickedness upon perjury, like Pelion upon Ossa, or drunkenness to thirst; to fulfill rather the measure of perjury, then thy oath; to persevere in perjury with obduracy, and impenitence.

SECT. XIV. The difference between an unlawful oath, and an oath of an unlawful thing.

Nevertheless concerning this Hypothesis, I must advertise, that this question, Whether this or that oath be lawful? Differs very much from that, Whether this or that oath oblige? For although it be certain that what ought not to be performed, ought not to be sworn, nevertheless it may come, and doth come very often to pass, that what ought not to have been sworn, ought notwithstanding to be performed. Of this the league made by Joshua with the Gibeonites, is a most evident example. The difference lieth in this: where an oath is therefore unlawful, because that which a man swears is an unlawful thing, there he sinneth both ways, in swearing, and in performing: as if one should swear to slay an innocent, and do it, he is guilty both of perjury and murder. And such an oath is in no ways binding, which is the true sense of this last Hypothesis. But where an oath of a thing which is not unlawful, becometh otherwise unlawful by some external defect, or through some undue circumstance; it may oblige the party swearing to the performance of his promise, except there appear other impediment. And in this case cometh in that vulgar speech, *Fieri non debet, factum valet*. We may therefore distinguish; an oath may be said unlawful two ways, either in respect of the thing sworn, or the act of swearing. An oath unlawful in respect of the thing sworn doth in no wise oblige: an oath unlawful in respect of the act of swearing obligeth, except it be hindered by some other cause. But thus much of these Hypotheses, which I thought fit to lead in the ensuing discourse, being props and supporters whereupon those things whereof I shall speak hereafter concerning the bond of an oath, and the solution of that bond, are sustained.

The Third Lecture.

Containing sixteen Cases.

SECT. I. The use of method, and order of the things to be handled; of the matter of an oath (1.)

I Begin here to launch into a vast sea, being to fulfill the promise and speak of the doubtful cases of conscience, which appertain unto the bond of an oath, which I shall do according unto the four kinds of Causes. But before I weigh anchor, give me leave to advertise you, that I shall not trouble myself very much in the Method of those things which are to be handled. Truly the use of Order in all kinds of study and discourse is very great and necessary, without which a man by assiduous and abundant reading, may perhaps acquire unto himself a mass of various learning, but that confused, indigested, and without any great profit; on the other side that excessive curiosity of method, (which I find some too industriously to affect) I have ever thought fit to be avoided as a kind of troublesome superstition, and no small remora to such as are studious; it shall satisfy me so to reduce all that which I am about to deliver, unto certain Classes, that at the least some reason of resemblance or analogy, may show why I do it; nor shall it trouble me much if a fault be found that the sense and interpretation of an oath is not well reduced to the formal, or some effect of it to the final cause. Now seeing where all the causes concur to produce an effect, Matter in the first place is required, as the first subject of generation; in the next the Efficient Cause, which by acting produceth the form; in the third the Form, which by the action, of the efficient is to be introduced into the matter. Lastly, the End for whose sake the efficient operateth. We, as it were following these steps of nature, will begin with Matter, and thence in their order proceed unto the rest.

SECT. II. The use of method, and order of the things to be handled;
of the matter of an oath (2.)

BY the matter of an oath, I mean that about which it is employed, and for the confirmation whereof it is made, whether it be considered as to be sworn, or as sworn. Of a thing to be sworn, the question is, whether it be lawful to swear after this or that manner? Of a thing sworn, the matter being stated, whether the conscience be, and how far it is obliged by the oath? Be it lawful or unlawful; (for obligation may arise from an unlawful Act) And this question only is proper to our purpose; Nevertheless I shall often cursorily express, at the least where I find that the same pot may whiten either wall, what I think of the other question also, especially since by intimation of my friends, I understand it is expected by some, and will be acceptable unto the most of you. The matter therefore of an oath, (that I may return to the business) is either definite or indefinite. That which is certain and definite, may be considered according unto its esse natural, or existence; to wit, whether it be a thing possible to be performed or impossible; or according to its esse morale, or quality; to wit, whether it be a thing necessary, unlawful, or indifferent?

SECT. III. Oath of a thing simply impossible.

The first doubt is, what obligation there is in an oath, containing an impossible thing: that is, if a man should swear to do a thing which he is not able to do, whether he be, and how far he is obliged thereunto. The Cases which occur in this doubt, are especially three. First, where the thing to be sworn was from the beginning, and

during the act of swearing, evidently and simply impossible, either by impossibility of nature, when the thing in itself, and barely considered without respect unto circumstance, implieth a manifest contradiction, or is repugnant unto the nature of any species of ens, as if a man should promise to teach an Ass to speak. Or impossibility of fact, Cum res est in potentia (as they speak) remota ad fieri; that is, when there is no such repugnance in the nature of the thing itself, but it might be done, yet through defect in some circumstance, (for example) too great distance of place, straightness of time, or any other cause, that potentia is so hindered that it cannot proceed unto act: as if Gaius being this day present at Oxford, should promise to sup with Titius tomorrow at Paris. Or lastly, impossibility of Law; when a man undertaketh to do anything which is forbidden him by the Law, and whereunto he hath no legitimate power: as if Gaius not being heir, should promise to give unto Julius some proportion of the goods of Titius deceased. In answer to the doubt in this first case, I say briefly, An oath of a thing simply impossible, is neither lawful nor obligatory. It is not lawful, because it is void both of judgment, and truth: for what man of sound judgment, or of good credit, can intend to do, that which he knoweth impossible to be done? Neither doth it oblige, no not so far as to endeavor, much less to perform; For it hath been already said that an impossible thing, (quatenus impossibilis) obligeth not; and it is foolish to endeavor that which thou canst not effect.

SECT. IV. Oath of an impossible thing, and from the beginning improbable.

The second Case is, when a thing in itself not impossible, yet during the time of the oath given seeming so impossible, that it is much

more likely not to be, then to be possible afterwards to be performed, becometh at length by some interposed obstacle impossible; for where the concurrence of many things is so necessarily required to the perfecting of any design, that one of many being wanting, the rest must necessarily be frustrated (as if a wheel or pin, though a small one, should be taken out of a watch, the rest of the fabric would be useless) it can hardly happen but the pains taken in such a business, must needs be fruitless: For example, if Gaius should undertake by his industry to procure unto Titius a new, and obscure man the Consulship, at the next *Comitia*, and to carry it against Competitors for birth, glory, virtue, authority, the most renowned of all the City. I answer, that such an oath is not lawful, without the express addition of some clause; as, If I can, As far as lieth in my power, &c. If you shall say, it were needless to add a clause which *de lege communi* ought to be presupposed. I answer, by the interpretation of the Law, such clauses are presupposed, where it may be presumed the party swearing could not foresee anything which might be an impediment unto the performance of his promise: but where that cannot, but rather the contrary may be presumed; to wit, that he could not but foresee many impediments, there so mild an interpretation is not granted *de jure communi*. Nevertheless this kind of oath obligeth, not to performance, which we suppose to be impossible, but to endeavor so long as there is hope though small, that it may be possible: yea and the more the difficulties be, and the greater their resistance, the more industriously to persist, and persevere with the more undaunted courage. But if the thing be over apparently desperate, and manifestly impossible, the obligation ceaseth, from the ground expressed, that no man is obliged unto an impossibility.

SECT. V. Oath of an impossible thing, and from the beginning probable.

The third case is, when the party swearing verily, believing the thing probable, and faithfully intending to do it, doubteth not (by God's help) but he shall be able to make good his words; nevertheless afterwards by some emergent, and unexpected accident, which could not by any human reason be foreseen or prevented, finds the matter at the length become impossible. As if Callias dwelling at Thebes, having sworn to pay unto Socrates at Athens five talents at a day appointed, should lose the money which he had carefully provided, by theft, rapine, or cozenage, or should be taken prisoner upon the way, so that he were not able to make payment of the debt in due time. Such an oath is lawful, though the clause, (If I can) be not added, the same being to be understood of course, and by the common interpretation of the Law. In which regard this seemeth unto me good reason of difference between this Case, and that which preceded. Seeing that the faith of promise, be given unto the party unto whom we swear, is the end of an oath; it is expedient that so much as seemeth sufficiently conducing thereunto, be fully expressed, during the act of swearing, that so our credit may be the more ratified unto the party; but that so much on the other side be concealed, as might render our credit the more suspected. For as in an improbable matter the party swearing would not easily be credited, but thought a forward, rash and too confident man, if without exception or expression of difficulty he should barely promise performance of a thing full of uncertainty: so on the other side, an exception added where there is no appearance of danger, might render the party swearing suspected; and show as if he sought nothing else by so impertinent diligence; but a shift or subterfuge for the violation of his faith. Now this kind of oath obligeth the party swearing, if he cannot make all good, to make good all he can; and if

great damage happen unto the other through non-performance of his oath, to apply a remedy to it, at the least in part, by some other benefit, as opportunity may enable him, especially if the obstacle happened by his negligence, want of prudence or other fault committed. And so much for the first doubt.

SECT. VI. Oath of a necessary thing.

The second about an oath of a necessary thing follows. By a necessary thing, I understand that which lieth upon us in respect of our duty, by virtue of divine precept, and even without an oath, in such manner as if we do not, though without an oath, perform the same in due time and place, we become guilty of sin: such are to feed our needy parents, to pay our debts, and the like. Whereunto belong those oaths required from the subject of allegiance to the King, and of acknowledgement, and defense of his royal supremacy, which are taken in conceived words, by such as are admitted unto the Magistracy, or any public office, to the end they may faithfully perform the duty of the same. Of the obligation of this kind of oath, there can be no controversy; for unto those things whereunto we are bound even without an oath, certainly we are much more obliged by an oath; to wit, the new obligation of an oath, being added unto that before by a precept: Wherefore we will stay no longer upon this doubt.

SECT. VII. Oath of an unlawful thing.

The third doubt is concerning an oath of an unlawful thing. I call that an unlawful thing which cannot be done without sin, forasmuch as it

is contrary unto some divine precept; all sin being averse unto the Law of God. Now this kind of oath is so unlawful, that not only the party swearing, but he also by whose authority, counsel, or other means, a man is compelled or inveigled so to swear, committeth sin. But of the party compelling, I shall perhaps speak hereafter; in the meantime, the party so swearing committeth sin, whether he intend to do as he sweareth, or intend it not. If he intend to do it, he sinneth in willing an unlawful thing, and so sweareth not in justice; if he intend it not, he sinneth in lying, and so sweareth not in truth; But whether he intend it or not, it is certain, that he is in no wise obliged. It cometh indeed very often to pass (so contemptuous are men of the Majesty of God) that through impatience of revenge, fear of danger, hope of profit, importunity of friends, a kind of awe, or complacence, or some other occasion, many are induced (whilst they indulge too much unto their own affections) to promise in the presence of God, the performance of such things, as they either at the present know certainly to be unlawful, or at least afterwards when they are free from their depraved affections, easily perceive impossible without sin to be accomplished: and yet such is the perverseness of human judgment bewitched with the tricks, and delusions of that skillful artificer in this art the Devil, that you shall see many whom you cannot by any duty of conscience compel unto a good action, nevertheless so violently carried by the religion of an oath unto wicked actions, that what they have unlawfully sworn, they think themselves through a most pernicious error obliged by the bond of their oath irresistibly to accomplish. But it hath been shewn before in our fifth Hypothesis, and confirmed by manifest reasons, that of an unlawful thing as unlawful there can be no obligation, and that evil can receive no validity from an oath.

SECT. VIII. Oath of a thing simply unlawful.

Which that it may be the better understood, and applied unto the particular cases, seeing that all unlawful things are not of the same kind and degree, I think that it will be fit that I speak somewhat more distinctly of this matter. Whatsoever therefore is unlawful, is unlawful either *ex se*, or *ex accident*: again, that which is unlawful *ex se*, is so either primarily, or secondarily; things unlawful, *ex se* primary, and in the highest degree, are such as are forbidden by God unto all mankind, whatsoever is against the sacred Law of God, comprehended in the two Tables of the Decalogue; whatsoever is repugnant either to our piety in the worship of God, or brotherly charity in the works of justice, and mercy, is after this manner unlawful. And concerning a thing in this first manner unlawful, is the first Case. As if a man should swear that he would sacrifice unto Idols, or adore the image of the blessed Virgin, which are sins of Commission: or if he should swear never to be present at divine ordinances, or hear holy Sermons, or participate of the Lord's Supper, or sanctify the Lord's Day, which are sins of omission, against the precepts of the first Table. Or if a man should swear to kill his father, or cast his new born child out of doors, or meet an adulteress at an appointed place and hour, to accompany others in theft, robbery, fraud, or any the like crimes, which are sins of commission. Or if he should swear not to relieve his aged and needy father, to give alms unto the poor, not to pay his debts, &c. which are sins of omission, against the precepts of the second Table. In these and such like things simply and universally unlawful, the forementioned Hypothesis, by the consent of all, is likewise simply and universally of force, and vigor; to wit, that there can be no obligation in such a vow, promise, oath, either in its self, or otherwise acquired. *Pacta quae turpem causam continent non sunt observanda*, say the Lawyers. Nay though it were a grievous sin to

vow, swear, bargain, or otherwise to promise a thing generally unlawful, yet is the sin in performing the promise much greater, which whosoever doth, maketh himself guilty of a double crime, one of the same kind with the fact considered in its self, put the case it be theft or murder, another of violated religion through irreverence and abuse of the divine Name, forasmuch as an evil thing is established, as far as lieth in his power, by his authority.

SECT. IX. Oath of a thing unlawful by Circumstance.

The second Case is of a thing unlawful, *ex se secundarid*, that is, not in its own nature unlawful to all but to some only, according to the condition of their persons, as they are members of some community, or according to their particular vocation. For it is unlawful (and that *ex se*, not *ex accident* only) for such as are members of any Politique body to do anything repugnant to the Laws of their Community; which nevertheless as forbidden by God, is not primarily, immediately, and in specie unlawful, but secondarily, mediately, and in genere, by virtue of the general Divine Mandate which enjoineth obedience unto rules, in all lawful and honest things; It is also in the same degree very near, and upon the same ground unlawful for such as execute any Office, Function, or particular Calling, as we usually term it, though perhaps improperly that state or condition of life wherein a man is placed to do anything incongruous with the nature or rule of that function or calling. For a thing may be lawful to a Civil Magistrate, which is not to a Minister of the Gospel, and so on the contrary that may be lawful to the Merchant, which is not to the Husbandman, that to the Master which is not to the servant, that to the married man, which is not to the bachelor, and the like; God having generally given them this Law, that every of them faithfully

perform the duties of his calling, and modestly contain himself within the bounds thereof. If therefore an English Merchant should swear to send Wool to Hamburg, or any other merchandise prohibited by law to be transported out of this Realm; or if any Magistrate should swear that he would not punish theft, or adultery; or a Bishop or Presbyter, never to preach nor administer the Sacraments; or a Servant not to obey his Master, commanding him to yoke his Oxen or reap his Corn; whereof the first is repugnant unto the Laws of the Kingdom, the rest unto the conditions of proper vocations: All these oaths would be of a thing in that degree whereof I have spoken unlawful; and the oaths themselves for that reason unlawful, and would not ordinarily oblige. I say not ordinarily, because there may perhaps be cases in which an oath that seemeth repugnant unto some Law of Community or Vocation, though it ought not to be taken, may nevertheless being once taken become obligatory. For example, in the penal Law disjunctive; suppose this to be the Law of the City, No Citizen thereunto elected shall refuse the office of Pretor; if he do, he shall be fined a hundred Crowns. Gaius a Citizen thinking himself unfit to bear office, or to avoid some inconvenience, that might happen unto him from thence, sweareth that he will never be Praetor of the City; he is chosen by the Citizens, he excuseth himself by his oath, they regard not his oath, but urge him to accept of the Magistracy; What is the Law in this case at the bar of Conscience? I answer, he ought not to have sworn, especially not compelled thereunto by any necessity; for he might have refused though he had not sworn. Nevertheless having sworn, he seemeth to be obliged, and not be in a condition without perjury to comply with the desire of the Citizens: he is bound therefore to pay the fine, and to refuse the Praetorship. I would be understood precisely, in respect unto the point to which I now speak, viz. the matter of the oath, and also precisely, in respect to the repugnants thereof unto the law of the City: For in respect of the ends or cause, nay even in respect of

the matter itself, as it is a hindrance of a greater public good, or for some other consideration, there may be just reason in it to make the obligation void. Nevertheless ordinarily, as I have said, an oath made against the Law of a whole Community, or of a particular Vocation, obligeth not. And thus much be said of the things in themselves unlawful.

SECT. X. Oath of a thing which seemeth unlawful to the party swearing.

The things which are not unlawful ex se, yet are unlawful ex accident, follow. Now a lawful thing happeneth to become unlawful, either by the error of the party swearing, or by some ill effect of the thing sworn. Wherefore the third case is, where a man promiseth by oath performance of a thing perhaps lawful in itself, which nevertheless he believeth to be unlawful, or feareth not to be lawful; as if a man (before these times) upon his admission to a Benefice (as they call it) Ecclesiastical, should have promised to observe all the rites commanded by Ecclesiastical Law in public Service, as the Surplice, sign of the Cross at the Font, kneeling at the Sacrament of the Lord's Supper, and the like; which he nevertheless through some light prejudice, thought to be superstitious and papistical; What is the obligation in this case? I give you three things by way of answer. First, I say, that such an oath, during such an error cannot be taken without great sin: for he sinneth grievously, who sinneth against his Conscience though erroneous; the judgment of the understanding, being unto every man the first rule of working, if the will follow not that judgment, swerving from the rule it must necessarily be carried into obliquity. It is an old saying, He who goeth against his own conscience, is on his way to Hell. Certainly he who sweareth unto

that which he thinketh to be unlawful, had sworn unto it, though it had been really unlawful; and so the thing though lawful to another, is as to him unlawful. It is the Apostles sentence, Rom. 14. 14, where he distinguisheth between that which is unclean of itself, and that which is unclean to another, plainly teaching that that thing which is not unclean, nor unlawful of itself, may nevertheless be unclean, and unlawful unto him who esteemeth it to be unclean, or unlawful. Secondly, I say, that such an oath obligeth not: the reason is manifest by the third hypothesis; for an oath cannot take away a former obligation, nor introduce an obligation contrary unto it. But the oath which is taken against the dictate of Conscience was preceded by another former obligation arising from that dictate. For the dictate of Conscience, whether right or erroneous, ever bindeth at the least not to act against it. Now a subsequent oath cannot remove this obligation, but becometh rather invalid itself, and loseth all strength and vigor. Thirdly, I say, if the party swearing being afterwards better informed, acknowledge and correct his error, the oath which at first obliged not, beginneth from thence forth to oblige; for the power of obligation is as it were naturally and inseparably in an oath, as the power of moving downwards is naturally and inseparably in a stone, which power is always ready to put forth itself, and to proceed unto act, except it be hindered by some impediment: Wherefore as a stone that it may move again, after it hath rested a while, needeth not any other new power to be derived unto it from without, but of its own nature, the obstacle being removed presently descends: so an oath, that obligation of erroneous Conscience, which at first withstood its operation, being removed, without any delay, or need of other help, is of its own force obligatory.

SECT. XI. Oath repugnant to former obligation.

There are other cases concerning things unlawful by accident, in respect of the evil effect of the same; to wit, as they may be impeditive of good, or causative, or at the least (for we must use such words) occasionative of evil. A good thing impeded may be antecedent or future. The fourth case therefore is, where the thing sworn seemeth to be unlawful in that it hindereth the performance of some antecedent good: of a vow imagine, or of a promise first made: as if he who had first bound himself with a vow to some work of piety or charity, should afterwards take an oath which might hinder the performance of his former vow. For example, if bound by a vow to give weekly the half of his gain to the poor, he afterwards swear to contribute his whole gain to the use of war; or as if Gaius having promised to sell his land to Titius at a certain price, should afterward swear to sell it unto Julius at a greater rate. This case hath no difficulty, for it is clearly answered, and the answer is founded upon the third Hypothesis, That such an oath is neither lawful, nor obligatory; because that former obligation however contracted, whether by agreement, or by vow, or by bare promise, or by mere duty remaineth valid, and putteth a bar upon all subsequent acts to the contrary.

SECT. XII. Oath hindering some good.

The fifth case is, when that which is sworn seemeth impeditive of some future good, as if one should swear that he would never be surety for another, nor a Minister of the Gospel, being of parts very fit for that calling; or having the sole knowledge of some useful Art, never to discover it unto any man; or the like. The reason of the doubt is, that the lesser good, in comparison with the greater good, holdeth in some sort the proportion of ill; wherefore an oath, though

otherwise honest, yet if it hinder a greater good, seemeth to be evil. Of the doubt in this case, no general and certain solution, able to comprehend all particular sorts, can be given, because it is employed in comparing the greater and lesser good, which dependeth very much upon the laying of circumstances, wherein the variety being infinite, all cannot be comprehended under certain and definite rules, but the matter for the greatest part must be left to the arbitration of some prudent person thereupon to determine, as by weighing arguments on both sides, with as much faith and diligence as he can, may at length seem unto him *pro hic and nunc* most expedient; yet in the meantime seeing it is not simply true (except warily understood) that every man is always bound to do that which is best; for solution of the doubt, in this case it may be said that an oath is not unlawful, nor loseth its force of obligation precisely, because it hindereth a greater good, unless other circumstances also concur (as they usually do) which may either prove it unlawful, or not obligatory. An example will illustrate the thing: Gaius is taught by the inventor Titius, a medicine of sovereign virtue or some other excellent art, but upon condition of an oath, That during the life, or without the leave of Titius, Gaius shall not discover the same unto any man. The noncommunication of so great a secret seemeth to be against the public good, and yet by the dictate of reason Gaius is obliged *bona fide* to perform what he promised, otherwise injury would be done unto Titius, whom it concerneth, that the secret be not divulged, which without such an oath first taken, had not been communicated unto Gaius himself.

SECT. XIII. Oath tending to the hurt of the party swearing.

It remains in the next place that we treat of things unlawful by accident, in as much as they seem to be causative, or at the least occasionative of some evil, and that either to the party swearing, or to others. Wherefore the sixth case is, where the thing sworn is hurtful to the party swearing, either by bringing upon him certain temporal loss, or by exposing him to the danger of temptation. As if Gaius should swear unto Titius the spendthrift to lend him a hundred Crowns, never a thousand to one to be repaid, which, would be to his loss; or if Fabius at the request of his wife made upon her death bed to defend her children from a step-mother, should bind himself by oath from second marriage, whereby perhaps he might expose himself to the danger of burning. I answer first, that this kind of promise is not rashly, or without mature deliberation to be made, nor except there be weighty reason for it, yet that it is not simply unlawful: for although all occasion of evil be diligently to be avoided; nevertheless seeing nothing which is not in itself, but by some other reason unlawful, can necessarily, and universally be an occasion of evil; and seeing there is not anything simply and in itself unlawful, only because it may be an occasion of evil; all promises of this kind ought not simply to be condemned, especially if probable danger of any great inconvenience, upon diligent consideration appeared not unto the party swearing at the time when he took his oath. Secondly, I say, if the oath turn to the temporal hurt of the party swearing only, without injury to a third person; the party swearing is bound though to his great loss, except the party to whom he hath sworn be willing to release him of his oath. They are the express words, Psal. 15. That sweareth to his own hurt, and changeth not. Where in the Hebrew, the first word is of the preter tense, (juravit in malum) the later of the future (& non mutavit) as if he should have said, It is the duty of a godly man, having sworn unto his neighbor that which he cannot perform without his own great damage, to be constant nevertheless, and to ratify that which he hath promised, and (as it is in our Text) to

do according unto all that proceeded out of his mouth. Thirdly, I say, the oath obligeth, though it exposeth unto hazard of temptation, except it be otherwise vicious. Because if that might suffice to make an obligation void, there would hardly remain anything that might oblige, seeing through the cunning of the Devil and corruption of the heart of man there is nothing so free from danger of evil, but it may become unto our destruction (except we be protected through the mercy of God) a snare of temptation: yet through the assistance of Divine grace, this obligation should rather be an useful buckler against the darts of the Tempter, for as much as thou art engaged to yield the less, and strive the more, because thou art bound by the Religion of an oath, not to do that whereunto thou art tempted.

SECT. XIV. Oath giving scandal to another.

The seventh case is, where the thing sworn seemeth unlawful in respect of the danger of scandal, which might thereby be given unto others, we through our fact affording them occasion of ruin. Many warnings, and those very heavy ones to avoid scandal, are extant in the Epistles of St. Paul, that especially to the Rom. 14. and 1 Cor. 8. 10. And verily a good Christian ought to take most diligent heed in all his conversation, not only to preserve his own, but not to offend another's Conscience, not only to seek his own, but the convenience of many, and to consider as well what is expedient for them as lawful for himself, lest otherwise he abuse his liberty to the destruction of his brother. But how far lawful things ought to be forborne that scandal may be avoided, is neither in few words to be said, nor the business of this present discourse. All that seemeth fit to be said of it in this place is, that the danger of scandal only, if there be no other reason why the thing should be thought unlawful, is not sufficient to

hinder the obligation of an oath taken, as hath been said in the precedent case of the danger of temptation, seeing that either holdeth in all points the same proportion.

SECT. XV. Oath of an indifferent thing.

Having now weighed the chief cases of things impossible, necessary, and unlawful, I proceed to the rest of the other doubts. The fourth doubt is of an oath *rei liberae*; that is to say, of a thing which is neither necessary, nor unlawful, but in the mean and indifferent. In which indifference seeing it ariseth from a twofold cause, from the will of the Legislator neither commanding nor forbidding; and from the levity of the thing; two cases answerably occur. The first case is, when a thing is not by any precept, or interdict Divine or human legitimate so deterrmined, but every man prohic and nunc, according to the exigence of circumstances, may at his choice do or not do as he seeth expedient; Let him do what he will, he sinneth not, 1 Cor. 7. 36. As if Gaius should swear to sell his land to Titius, or to lend him a hundred Crowns; The answer is brief, an oath in this case is both lawful and binding. The second case is, where a thing is so trivial, that it is not worth the deliberation of a wise man, nor matters a straw whether it be done or not done, as to reach up a chip, or to rub ones beard, &c. or for the slightness of the matter is not much to be esteemed; as to give a boy an apple, or to lend a pin, &c. An oath of a thing indifferent after this manner is altogether unlawful. For it argues either irreverence of the name of God, (if through a habit of swearing, as it is too common) it be used unawares; or if wittingly and knowingly, of open contempt; for God is not to be invoked witness, except in doubts worthy his vindication, and where the cause is as well weighty as just. And in this all agree. But what of the

obligation? It is the opinion indeed of most Romish Casuists, that an oath or a small and trivial thing is in the nature thereof null, and bindeth not, because forsooth a small matter is not proportionable to an oath, and *Lex non curat de minimis*. But I wonder they who would be thought to see into other things like Lynx, should be blind in one so apparent, except it be done to give place unto that rotten distinction of mortal, and venial sins, a heaven with which they have foully corrupted the whole lump of moral Theology. But that an oath is binding in a matter of the least moment is evident; First, because weighty, and trivial things have a like respect unto truth and falsehood. Secondly, because in the assertory oath, he who affirms otherwise of the thing (be it never so small) then it is, is perjured; wherefore a simili, he also in the promissory, who doth otherwise then he swore to do. Thirdly, because God would else be made witness of falsehood. Fourthly, because every party swearing is bound to perform all he promised as far as he is able, and it is lawful: but to give an apple to a boy is both possible and lawful; he is bound therefore to perform it, he ought not so to have sworn, but having sworn he ought to fulfill his oath.

SECT. XVI. Oath to do what another would have to be done.

The fifth doubt remaineth, where we swear unto a thing indefinite and uncertain; and it containeth three cases especially. The first case is, when one man delivereth himself as if it were into the power of another, promising to perform whatsoever the other will impose upon him; as when a Prince swears unto his favorite, to give him in acknowledgement of his faithful service whatsoever he shall desire; or a friend, or servant, swears unto his friend or master to obey what he shall command. In this case I say first, that this kind of oath, if it

be simply understood according to the tenor of the words, is unlawful. He injureth God, whose servant every man is, who maketh himself a servant to man and slave to another's rashness. Secondly, I say, that something else must necessarily be understood to make it lawful. For example, I swear to do as you will have me, meaning whatsoever is just, honest, possible; and so far, and in this sense it obligeth. The Kings of the Persians and Jews seem anciently to have used this, as a solemn form, and for the fuller ostentation of their grace, and magnificence, to have sworn indefinitely; Ask what thou wilt, and it shall be given thee even to the half of my Kingdom; so sware Ahasuerus King of Persia unto the Queen his wife; and she asking a just and necessary thing, he according to his oath commanded it to be done. But Solomon having promised almost in the same form the Queen his mother to give her what she should ask, and she in favor of Adonia asking a thing, which Solomon already acquainted with the ambition of the man thought too unjust, Solomon notwithstanding his oath, fulfilled not the desire of his mother. By which fact he sufficiently showed that he sware with no other intention of performance then as the thing asked should be just. By which example he hath taught us, that in oaths indefinitely made unto the will of others, the condition ever to be understood, is, if the request by the rule of good and honest be modestly asked, it is just and reasonable it should be faithfully performed. There is yet a third example of an oath of this form, Matth. 14, where Herod the Tetrarch to favor the Danceress his brothers daughter, sware to give her what she would ask: she asked a most wicked thing, the head of an innocent man, and not condemned, to be cut off, and put in a Charger. The King commanded it to be done for the oaths sake, and them which sat at meat with him. For alas! the religious, and the bashful Prince was ashamed in the presence of so many guests not to fulfill that, though with most execrable wickedness, whereunto he had bound himself by the Sacrament of an oath. Let Herod's be an

example unto us of warning, but Solomon's of imitation: and let us remember that an oath so indefinitely made, is ever to be understood within just exception, and to be extended unto those things only which in probability were thought upon during the act of swearing, and not unto those which if they had then been thought upon, the oath had not been taken.

SECT. XVII. Oath to preserve Laws, and observe statutes (1.)

The second case is, when subjects are required to take an oath for preservation and defense of Laws and Liberties, Privileges, Prerogatives, and preeminence's of some superior power, as of a King, a Commonwealth, or Lord Paramount; such as are amongst us the oaths of Homage, of Royal Supremacy, and the like. No man denieth these oaths, either to be lawful or obligatory; but in respect of the frequent uncertainty of the Laws whereunto they relate, it may very well be doubted how far they oblige. Doubtless the Subject to his power is obliged to defend all rights which appear either by law or custom Legitimate, whether defined by the written Law, or in force through long use of time, or prescription, that is, so far as they are known, or may morally be known. But he is not equally obliged unto the observation of all those which are controverted or doubtful, especially since powerful men are accustomed to stretch their Tethers, and leap over the Landmarks of their neighbors, not contenting themselves within the bounds of their own right. Nevertheless a subject ought to be always prepared in mind, so soon as the justness of those things which are doubtful shall appear, to acknowledge and defend them.

SECT. XVIII. Oath to preserve Laws, and observe statutes (2.)

The last case is, where an oath is required of member of any Community, as of a City, University, or College, Society of Merchants, or Handicrafts men, to observe the Statutes, Customs and Liberties of that Corporation; If you ask what the obligation is? I answer, first, that the party sworn, is obliged simply unto the observation, as far as in him lieth, of all fundamental Statutes. By fundamental, I understand such as most necessarily and nearly concern the preservation of the public estate, order, and honor of the whole body or Community. But Secondly, not that always and necessarily, to the rigor of the letter, but as they are put in practice, and received by custom, and as they are with approbation observed by others. Thirdly, concerning the lesser Statutes appertaining only unto external form and decency, which by the condition of the matter, or form of the Sanction, or any other probable conjecture, a discreet man may judge not to have been framed with intention of rigid obligation; he is obliged to observe them ordinarily; yet so as without scruple of conscience he may sometimes, having just cause for it, pretermitt that which is prescribed to be done by some Statute, provided it be without scandal or contempt. Fourthly, the obligation is extended unto Statutes to be made for the future, provided they be possible, just, and honest. Fifthly, if any Statute after the oath taken be abrogated or grown out of use, the obligation of the oath as to the Statute ceaseth; and he is not bound any longer to observe it, unless he have sworn in express words unto the matter itself, decreed by that Statute. For in that case, though the Statute be taken away, the obligation remaineth. Sixthly, seeing Statutes of Corporations be very many, and many of them unknown to many, and that it is most difficult, nay scarce possible to observe them all exactly, and to an hair, he who shall behave himself so honestly that willingly he omitteth nothing appertaining to his duty, and is morally diligent to

attain the knowledge of all those Statutes which tend thereunto, and resolveth faithfully and without scandal to be serviceable unto the estate, honor, and peace of his Community, as far as human frailty will permit, performeth doubtless with a very good conscience his faith given for the observation of the Statutes; and by the rule of just and honest, dischargeth the duties whereunto he obligeth himself. And the like is to be understood of the public Laws of a Kingdom.

SECT. XIX. Caution concerning a right understanding of the things mentioned.

And this shall suffice to be spoken of the first Classis of Cases. But lest it be thought my intention to permit too great a license of oaths, because I have so often said that this or that kind of oath is not unlawful, I thought fit maturely to advertise you, that I have said nothing this day, nor shall hereafter, that may give any man reason to believe it lawful for him to swear at his pleasure, it being well known unto me that an oath is a sacred thing, not without great necessity, and then seldom, and with much reverence to be used. But my meaning throughout is, that an oath upon this or that occasion is not simply and generally unlawful. For example, when I said on oath impeditive of a greater good is not unlawful; or an oath of an indifferent thing is not unlawful; my sense was, that an oath ought not therefore to be concluded simply, and generally unlawful, (so it have all the rest of the due conditions) only because it is impeditive of a greater good, or only because it is of an indifferent thing, or which comes all to one, that there is not in those considerations any such impediment, but it may be lawful, if it be otherwise necessary, and in all other respects duly qualified.

The Fourth Lecture.

Containing seventeen Cases.

SECT. I. The efficient cause of an oath, and the things to be handled, proposed.

The principal difficulties appertaining properly unto the matter of an oath, being finished in the foregoing Lecture; we proceed unto the solution of those doubts, which may be reduced unto the Efficient cause. The Efficient cause of an oath is, as to our purpose twofold; the Agent, to which effect properly belongeth, and the Impulsive cause. Again the agent is either principal, or more remote from the effect. For as two persons at the least, to wit, the person swearing, who engageth his faith, and the deferent, as they speak who follow Cicero, or person to whom the engagement is made, must as terms of this relation concur in the obligation of an oath. So each hath his part in the work. The first, and especial belongeth to the person swearing, the second to the Deferent, or person to whom the oath is made. In both agents, the condition or aptitude of the person is first to be considered, next the extension of the obligation: Wherefore in this kind of efficient cause, such doubts are in the first place to be considered, as arise from the defect of some condition requisite on the part of the principal agent to qualify him for an oath. And two things especially are requisite unto such a qualification, rational judgment, and lawful power. For an oath ought to be taken with a mind both deliberate, and resolved to perform the promise; But he who is not endued with rational judgment, can neither be deliberate, nor he who is not his own man, but in the power of another, make a steadfast and effectual promise.

SECT. II. Oaths of children.

Wherefore the first doubt is, How far the oath of a person not endued with the faculty of judgment, obligeth? Which defect seeing it may arise from divers causes, divers cases are therefore contained under this head. The first is of Children so soon as they attain unto the use of reason, which at what time of their age it may happen is not, nor do I think can be defined, seeing some are sooner, and some later ripe; The Civil Laws of the Romans, and the municipal of most Nations, pitch upon certain years under which they admit not children either to take assertory oaths, or to be compelled unto promissory: such amongst us is the age of 16, he who is younger, is neither admitted to be a witness in judgment, nor required to take the oath of Allegiance, nay if he have taken an oath, it is null in Law; this is right at the Bar of Justice, not at the Bar of Conscience. Children should be taught from their tender age by their parents, and pupils by their Tutors, early to understand, and duly weigh the power and efficacy of an Oath, the guilt and punishment of perjury, that they may beware the wicked custom of the one, and horrid crime of the other. For it can hardly be imagined of what necessary or lawful use the oaths of children should be, they being both unfit to judge, and not in their own power, unless parents in whose power they are should require it at their hands, for the faithful performance of some commands. As fame reports Han ball, about the ninth year of his age, to have been set by his Father Amilcar before the Altar during the time of Sacrifice, and there bound by oath to be a perpetual enemy to the Roman name. But oh shame! what is become of Domestic Discipline amongst Christians? Children scarce able to speak, are heard in every street tearing the sacred and dreadful name of God with profane lips, and oaths, both without fear, and punishment:

seasoned with the abominable stench of which vice like new vessels, it will hardly out when the cask becometh aged, and rotten. But I would not be carried away with the tide of grief, and indignation, I return to the point, and say, that oaths of children before they attain to years (as we call them) of discretion, or know what deceit is, through defect of judgment, are neither lawful, nor obligatory. But so soon as they are capable of deceit, and can in some, though small measure understand what the nature, and force of an oath is, which happeneth for the most part, about the seventh year of their age, and earlier in many forward wits, or such in whom malice supplieth age; the oath of a child, though it be absolutely unlawful (unless that one case, if a parent require it, may be excepted) being taken obligeth, if there be in it no other impediment. The reason is, because an act in its own nature obligatory, such as is the act of swearing, proceedeth from a mind endued in some sort with the faculty of judging.

SECT. III. Oaths of mad men and fools.

The second case is, of the oaths of mad men, and the third of fools: to whom the vice of unseasonable belching forth of oaths, even when they think least upon it, is familiar; which although we may, and God who is most merciful, and expecteth not an harvest where he sowed not, perhaps will forbear to impute unto them for sin, because it proceedeth from invincible error, yet most certain it is of every oath, and pronounced by our Savior, that it cometh of evil; from the instigation of the Devil, and common corruption of man's heart, through which all the children of Adam are inflexible unto good, and wax unto all kind of wickedness: to make a doubt whether such oaths be lawful or unlawful, were vain and useless. For to weigh whether things be lawful or unlawful, belongeth to such only as can in some

measure judge, whether done or to be done they agree with their rule the Law of God, and right reason: which Law it were in vain to plead unto such as are destitute of that faculty, and void of understanding; Certainly he who requireth reason of a mad man, is mad with reason. This kind of oath therefore as much as it is the act of a distracted person, is in no wise binding; except otherwise frantic, he enjoy his reason by lucid intervals; in which case it bindeth no less during the time he so enjoyeth the use of his reason, then one made by a man of sound and reposed judgment.

SECT. IV. Oaths of men drunk and enraged.

The fourth and fifth cases are of oaths made by men who are drunk, or in rage, promising or threatening something, which in sobriety and cool blood they would not have promised or threatened. The reason of doubt is, that whereas some judgment, at the least of a deliberate, mind is requisite to make an oath obligatory; Drunkenness and wrath, which are but short fits of madness, so perturb the judgment, and for a time take away the use of reason, that till the one have slept, and the other reposed his mind, neither seemeth much to differ from a mad man. But of these oaths, this in the first place is certain, that neither kind can be excused of sin, but whether drunkenness, or the vehemency of anger aggravate the sin which is the act of swearing, or rather extenuate it, all are not agreed, nor seemeth it possible to answer simply and sufficiently unto this problem by a single affirmation, seeing judgment in the point dependeth very much upon circumstances. But be it as it will, the question is not to this purpose. The nature of the doubt showeth it to be unfit, that a drunken or angry man should swear at all, because during that distemper he cannot swear in judgment, but must

necessarily blab out whatsoever his wine or passion (which are immoderate Counselors) shall persuade, and which in cool blood, and sober, he would give anything were unsaid, or unsworn; nevertheless we must distinguish of obligation. For first, the thing whereunto he swears, is either unlawful, or lawful and honest: If unlawful, (as it happeneth for the most part, especially in oaths which fall vehemently from angry men blinded with eagerness of revenge) it is evident that they oblige not; for it hath been sufficiently demonstrated that an unlawful thing is not obligatory. Wherefore it was prudently advised of Abigail, and piously followed by David, when animated by the unworthy reproach of an ungrateful man he had sworn the destruction of Nabal and his whole family, in that he dispensed with his oath, and withheld his hand from blood. But if the thing sworn be lawful, as that often is, which drunkards ostentatiously promise, then we must look Secondly, what and how great the excess of drunkenness was, whether in a degree to hinder only, or perturb the use of reason, or utterly to deprive of understanding, and transform the man into a beast. He who sware having wholly lost the use of his Reason, is bound when he is sober, seriously to repent, both of his debauchery and rash oath; but is not obliged to do as he sware, because during the act of swearing he had not that use of reason, without which there is no judging of things with deliberate understanding. But the use of reason hindered only, and not so taken away, but that he might, though drunken, in some measure judge and resolve, it seemeth he is in some measure obliged to fulfill his oath, at least in part, if it may be done without his very great hurt, and this both in respect of his antecedent deliberation sufficient to bind, and for punishment of his rashness, that he may learn for the future to be wiser, and lead a sober life, lest he stumble into that drunkenness which will stick by him sober. But if performance of the oath be to the great hurt or inconvenience of the party swearing; as if a man being drunk, should promise to sell the

land whereupon he keepeth his family for little or nothing, he seemeth not to be obliged. The reason is, that such a promise is a certain sign of the absence of his understanding. Wherefore seeing his mind was not fully free during the time of the oath, neither is the obligation full. Perhaps in this case it would not be the worst end of an ill business, if it should by both parties be wholly referred unto the arbitration of an honest and prudent man to be by circumstances determined, what part of the thing promised, the party sworn deserveth to make good in punishment of his drunkenness, and temerity.

SECT. V. Oath of one being in the power of another (1.)

The second doubt is, of his oath who is not in his own power, but another's. As if a son or pupil in the power of Parents or Tutors, or a servant in his Masters, or wife in her husbands, or subject in his Princes, or a soldier in his Captains, or the like should take an oath without permission of his superior; What and how far availeth this oath? I answer, he who is under the power of another ought not to determine of any of those things, wherein he is subject by an oath, without express consent of his Superior, where it may conveniently be had, or at the least without his tacit consent; that is, where the party swearing may probably conjecture that his Superior, if leave were asked, would not refuse to grant it. If he doth otherwise, he sinneth in swearing, neither is he obliged to perform what he sware; nay he is obliged not to perform it, unless his Superior being made acquainted with the matter give him leave; as is at large explained by Moses through this chapter in the case of a vow or oath, (for as to obligation they appear the same in this verse) made by a Virgin, whilst she is in the house of her Father, or by a wife in the house of

her husband; The sum is, that the vow of a Virgin, if her Father knew of it, and contradicted it not, is valid, because by silence he seemeth to have given consent; but if he contradicted it, it is void. And the same by Analogy may be determined of all such as are under the power of others, so far as they are under such power: which for two reasons appeareth by that which hath been said. First, because he doth injury unto another, who as it were by a right of his own, disposeth of the right of another; but by our fifth Hypothesis no man is bound by an act injurious unto another, seeing that an unlawful thing obligeth not. Secondly, every man is bound by his duty to be subject unto his Superior, and obey his will in those things wherein he is Superior: which obligation by our third Hypothesis, a subsequent oath cannot take away. Wherefore we must necessarily conclude, that the oath of one who is under the power of another without the others consent, is neither lawful, nor obligatory.

SECT. VI. Oath of one being in the power of another (2.)

Nevertheless this conclusion is not so absolute, but it may admit of two exceptions; one respecting the party swearing, the other, the consent of the Superior. For the party swearing, it is to be considered that there is scarce any person enjoying the use of reason so fully in the power of another, but he is at the least in some things at his own disposing; and of these every man may according to his discretion, even without leave, or acquainting his Superior with the matter, so determine, as may be obligatory. The servant of Gaius ought not to let out his labor to Titius, or lend, or give unto him any part of his Masters goods, without the consent of Gaius; because things concerning the performance of duty, disposing of goods, or other service of the family, are wholly in the Masters power. But the

servant or son of Gaius may promise even without acquainting Gaius to give unto Titius that which is peculiarly theirs, and if they confirm their promise by an oath, they are bound whether he will or no to perform it, because each hath free right, to dispose of that which is peculiarly his, and is as to that in his own power. Secondly, for the consent of the Superior, it is to be observed, that unto the ratification of the oath of the inferior, precedent consent expressed, is not necessarily required, but it sufficeth if it be tacit, whether antecedent, or subsequent. Tacite antecedent consent, I understand to be, when from the lightness or equity of the thing, or other probable cause it may very well be presumed, that the Superior if he had been asked, would have consented unto, or at least not forbidden the fact; as if Gaius being from home, or not acquainted with the business, his wife should clothe a poor man with an old suit, or give an alms to a beggar, or his son, or servant, upon his neighbors entreaty should lend an Ox, or a Cart, or other Instrument of husbandry or household stuff, or should contribute their assistance to build a neighbors house, or bring home his Corn. Tacite subsequent consent, I understand to be, when the Superior, in whose power it is to make any promise rashly made by the inferior, if he see cause, invalid; coming afterwards to knowledge of the promise, doth not presently and openly contradict it, nor discovereth by any certain expression, that he so far disproveth the act, as that he would not have it fulfilled, according to that which is directed by Moses in the 6. 8, and other verses of this Chapter, where to make the vow of a daughter or wife invalid, an open and mature signification of the dissent of the father or husband is required. For it is not enough to render the daughters vow invalid, that the Father say it displeaseth him, but he must openly declare against it, verse. 13. 16, si renuendo renuat, and tollendo tollat; As if he should say, he must constantly withstand the fact, and by interposing his authority forbid the performance of that which is promised. It is also required that the same be speedily done,

verse. 6, 8, 9, 13, 15, upon the day that he heard it; As if he should say, if he conceal his dissent but a day, he hath established the vow forever; for he is presumed to have been willing, who slowly expresseth himself to be unwilling.

SECT. VII. The authority of him, who giveth an oath.

Having considered the party swearing, the deferent or person to whom the oath is made cometh in the second place to be considered, and is concerned in the third doubt; wherein two cases occur, one respecting his authority, the other his faith. The first case is, where we make a question of his authority who requireth an oath of us. For if he be a legitimate Superior, and so acknowledged by us, nor require other oath of us, then what is decreed by the Law, and confirmed by daily and approved custom, no man doubteth but such an oath may both lawfully be taken, and ought faithfully to be performed. But where he who requireth the oath, seemeth to have no right so to do, but to usurp a power which belongeth not unto him, it may very well be doubted whether it be lawful to take an oath by him so offered; and if we take it, whether, and how far we are obliged by it. First, I say, that a pious and constant man ought as much as in him lieth to decline all oaths imposed by such as have no lawful authority: not only because it is an ordinary thing to compel those upon whom they exercise Tyranny unto unjust promises, but also because every man is bound to defend his right, and liberty to the utmost, and not tamely to thrust himself into the yoke of another's Tyranny. But secondly, if besides command such force be used as he cannot resist, and there be no refusing without extreme danger, to avoid I say, the certain consequence of a very great inconvenience, a pious man, but sadly, heavily, and with some expression of

reluctancy, may take such an oath, provided the words of the oath (which seldom happeneth upon this occasion) contain nothing unlawful in itself contrary to known Law, or derogatory from the right of any third person; otherwise he ought to refuse it, even to the hazard of his life, and to endure the utmost rather than oblige himself in an unlawful bond. Thirdly, he who hath taken an oath, given by a person, who had no lawful authority, but in all other respects lawful, is many ways bound unto the performance thereof.

SECT. VIII. Faith to be kept with enemies, heretics, perjured persons.

The second case is, where he unto whom the oath is to be made, is an Infidel, Heretic, or one who hath formerly broke his faith. First I say, it is lawful to swear unto an Infidel, Heretic, or perjured person; it was done by the Patriarchs, Isaac and Jacob, also by Joshua, and the Princes of the people of Israel; these made leagues with strangers and Infidels, and on both sides confirmed their mutual faith by solemn oaths. Secondly I say, that faith given unto such is in any wise to be kept. We use to object unto Papists, that they hold faith not to be kept with Heretics; wherein the Jesuits of this age exclaim that great injury is done unto them. They are ashamed forsooth in so clear light openly to profess a doctrine so wide of all right reason, and pernicious to human society. But our men have proved, even by showing the places, that some of their Doctors have defended that Conclusion, whose books are neither prohibited nor expurgated. But let them all deny it in words, this at least is apparent, if we may judge of their opinion, either by the principles of their doctrine, or by their actions, and reason of those actions, as their own Historians of most unsuspected faith have related them, there is no such cause why they

should so confidently exclaim that we have slandered them. In the meantime whilst they would shift of this opinion, they tacitly acknowledge it either false or impious. The Prophets sometimes reprove the Kings off Judah, especially Ezek. 17, almost throughout the chapter, that they kept not their faith sworn unto the Kings of Babylon; the place is remarkable, and by Chrysostome largely and elegantly explained. Nay in this kind the faith of Regulus and others is renowned in Heathen story, who made good what they had sworn even unto enemies, and Carthaginians (a most perfidious Nation) though to the hazard of their lives. Silius adorneth Regulus with this commendation, calling unto him as it were by an Apostrophe.

Their Fame to late posterity shall sound, Faithful to faithless Carthaginians found.

But you will object perhaps those vulgar sayings, To deceive a deceiver is no deceit, and Cum Cretensibus cretizandum. To which may be added those which Grotius useth, on the speech of Brutus, in Appian; Romans knew no faith nor Religion of an oath to a Tyrant: the other out of the old Tragedian, where one saith, Thou hast broken thy faith; the other replieth, Which I neither gave, nor give unto any faithless person. I answer, that these taken from common practice, rather show what useth vulgarly to be done, then what ought to be done; or if you admit them for truths, that they are only approvable in such cases, where the oath was taken upon condition; either expressed, as thus, I swear to give you an hundred Crowns, if within a month you redeem your land which I have in Mortgage; or at the least tacit, as when two oblige themselves by mutual oaths to fulfill mutual promises with mutual respect. For example; if Chremes the Master, swear unto his servant Sosia, to give him annually ten Crowns, and Sosia likewise swear unto Chermes, to serve him eight years; He of the two who first violateth his faith, presently absolveth

the other from the bond of his oath. But if two oblige themselves mutually in promises of different kinds, or not at the same time, or otherwise without mutual respect, faith violated by the one, absolveth not the others obligation, but each is bound to stand unto his oath, though the other have not performed his part. For example, a King simply, and without respect unto the allegiance of his subjects, sweareth to administer his government righteously, and according to Law; the subjects at another time simply, and without respect unto the duty of the Prince swear allegiance, and due obedience unto him; they are both bound faithfully to perform their several duties; nor would the King be absolved from his oath, though Subjects should not perform their due obedience, nor subjects from theirs, though the King should turn from the path of justice.

SECT. IX. Whether an oath oblige the Heirs of the party swearing, and how far.

Hitherto of the condition both of the Agent, to wit, the party swearing as principal, and of the deferent or person to whom the oath is made as less principal: The fourth doubt followeth concerning the extension of the obligation in respect of both the persons; wherein two cases occur. The first concerneth the person swearing, Whether, and how far the oath obligeth his Heirs, and Successors? For example, Gaius having bought a field of Titius, sweareth simply to pay him a hundred pounds within six months, within the time Gaius dieth, the question is, whether by virtue of the oath made, the Heir of Gaius be bound to pay the money promised? I answer, the Heir of Gaius in respect of the thing, which gave occasion unto the oath is bound to pay, forasmuch as he enjoyeth the field for which the money was promised: for the heir who inheriteth the estate of the

person deceased, is bound de jure, to pay his just debts, it being most equal that an estate should pass with the engagements that are upon it. Nevertheless the heir is not bound by virtue of the oath made by the person deceased, by which means if he pay not, he is unjust only, not perjured. The reason is, because an oath is a personal bond, and contracteth a spiritual obligation only, at the internal Bar of Conscience, not a civil, and temporal one at the external Bar of Justice. But in personal things no man is bound without his own consent. If it be said, that Gaius by his personal act may well oblige himself and his heirs unto some performance, as we see it daily done by instruments of Law; and therefore from the like, that he may also bind his heirs by an oath, especially, if he say in express words, that he sweareth for himself and his heirs. I answer, that there is not in either like reason. Because the personal obligation which is in the Conscience must necessarily be personal, as a man's conscience is proper unto himself; and cannot pass into another: but temporal obligation followeth a temporal thing, which seeing it may pass unto another person, may also lay an obligation upon another person; wherefore the heir is bound by the equity of the thing, not the virtue of the oath.

SECT. X. Oath to be performed by the Heir or Successor.

The second case concerneth the person to whom the oath is made, whether he who hath sworn the performance of a thing unto another, the party unto whom he sware being deceased, be bound to make it good unto the Heirs or Successors of the said party? I answer, ordinarily he is. It is certain the party swearing is obliged, if he expressed that he would perform the oath unto the heirs of the other. It may also be taken for granted, that he is bound though he

expressed it not, if the oath taken relateth to dignity; because dignity varies not with the change of persons. Whence if any subject or soldier swear fidelity unto his King or General, the oath is to be taken as made unto them also who succeed unto that dignity. The same may be said in matter of debt, and sundry other things wherein consideration of duty, or contract gave occasion of the oath. If you shall inquire how it cometh to pass, that the bond of an oath being personal as to the party swearing, is not also personal as to the party unto whom the oath is made, but passeth unto his heirs, or successors: or which comes to the same matter, how it cometh to pass that a man may engage himself unto another, and his successors, though successors be not expressed in the oath; but cannot oblige himself, and his successors, though they be expressed in the oath. I answer, the reason of the difference lies in this, that in the one case obligation of a man's self is meant, in the other, obligation of others. Any man may oblige himself spiritually as he will or pleaseth, and therefore may by his proper act oblige himself, as well to the successors of another as to the person himself; but a man cannot lay an obligation upon another unless he also consent, and therefore he can by his act spiritually oblige himself only. Now whereas I said in answer unto the doubt in this case, that the party swearing is ordinarily obliged; the reason why I said so is, because it may be that sometimes he is not obliged; for seeing that the intention of the party swearing, ought to be judged of according to the nature of the thing, and subject matter, where from the nature of the thing promised, and other circumstances it may probably be conjectured, that the party swearing intended only a personal promise unto the person unto whom he sware, and not unto his successors, the obligation of the oath divideth not unto those successors.

SECT. XI. Voluntary oaths.

But of active causes this may suffice, I pass to the impulsive, which are partly external, and partly internal. Internal, when a man through the mere motion of his own will, not compelled by any other, freely offereth himself to take an oath, or through some transportation of anger, love, or other passion of a perturbed mind, or through delight in sin, and impious custom of swearing rashly, and without judgment, besprinkleth his discourse with oaths. Which vice, both in respect of the heaviness and frequency of the sin, I could wish were more often, and vehemently reprehended in Sermons, as I see it was diligently, and sharply done in his time by the most devout man, John Chrysostom, left by the just judgment of God, through oaths the earth mourn, and the Lord swear in his wrath, that he will not hold them guiltless, who so contemn his dreadful Name, that they fear not to invoke his most sacred Majesty as witness, and arbiter without any necessity. But I shall not say much concerning oaths of this kind. All spontaneous oaths, are absolutely forbidden, except upon weighty and necessary occasions. It will be worth our while, to hear Augustine of himself; I swear, saith he, but as I conceive compelled thereto by great necessity, whilst I see that I am not believed without it, and that it is not expedient for him who believeth me not, not to believe me. As if he should have said, we may only then swear, when it is expedient that we be believed, and cannot be believed without we swear; And in this case (in which only it is lawful) a voluntary oath is the more binding, for being voluntary; because there is no straighter obligation then that which we take willingly upon ourselves.

SECT. XII. Oath obtained by fraud.

Wherefore letting these pass, I proceed to external impulsive causes, which are especially two, Deceit and Force. The fifth doubt therefore is, of an oath into which we are inveigled by craft and deceit, that is, when one man led into error by another man's word or fact, sweareth to perform something, which if he had not been deceived by another, he would not have sworn. Of which we have an illustrious example in Joshua, and the Princes of the people of Israel, who deceived by the Gibeonites, feigning themselves to be strangers come from a far country, to desire a league with the people of God, admitted them unto the league, and sware a peace with them; Nor did the Israelites when they found themselves deceived presume to retract the oath, knowing themselves bound by the Religion thereof, but granted life and peace unto the Gibeonites, as they had contracted: Nevertheless they found out an expedient, (imposing upon them the condition of servitude in the vilest offices) whereby the Gibeonites might pay for their craft, be kept in their duty, and not be able for the future to hurt Israel; of which fact saith Ambrose, Joshua thought not the peace which he had given to be revoked, because it was confirmed by the bond of an oath, lest whilst he argued others perfidious, he should break his own faith. By which example it is plain that an oath, though obtained by deceit, hath the strength of obligation. And lest that any man should think that Joshua and the Princes were too superstitious in this matter, they resisted not only the people who thought the Gibeonites, notwithstanding the oath, ought to be slain, rendering this reason of their advice, We have sworn unto them by the Lord God of Israel, now therefore we may not touch them. But God so approved afterwards of the thing by a double sign. One when he bestowed upon Joshua, fighting for the Gibeonites against the Kings, who had made a confederacy for their destruction, a remarkable Victory, accompanied with an illustrious miracle; the other, when above a hundred years after, King Saul's unjust violation of the League made with the Gibeonites was punished with three years

famine, and at the length expiated with the death of seven of his sons, by God's express Command publicly hanged.

SECT. XIII. Oath taken through some light fear.

Nevertheless this case will admit of a distinction. For the error whereinto the person sworn is led by the deceit of another, if it be about a circumstance only, or about the cause of a thing, as if it were extrinsic and accidental, taketh not away the obligation, as appeared but now in the error of the Israelites concerning the Gibeonites. The like might be said in case Gaius should swear to take the widow of Titius to wife, believing her though poor to be rich, he must take her, this error rendereth not his oath invalid: and the like is to be said of oaths of the like kind. But if the error be about the substance of the thing, or its proper cause; as if Gaius should swear to marry this particular woman under the name of Titia, believing her to be Titia, though she be not, and afterwards should find his error, he is not bound by oath; for an error in the substance of the thing, which was the proper cause of the oath, rendereth the promise invalid, and obligation void.

SECT. XIV. Oath extorted by force or fear.

The sixth and last doubt is, of force, or of an oath extorted by fear, against the will of the party swearing, in such manner as if the fear were not, he would not swear; and truly this is a difficult and intricate question; nevertheless I will endeavor to explain it with as much brevity and perspicuity as I can. The first case is, where the fear is slight, and such as cannot easily affect a constant man, as if

through the fear of unjust censure, or of derision, or displeasure of some powerful person, a man should promise by oath the performance of something which would be inconvenient for him, and such as, were it not for the fear, he would neither do nor promise. In answer, I must first repeat which in the whole matter of oaths is most religiously to be observed, that if anything be proposed to be sworn, which is against the Law of God, against the duty of a Christian, against a virtuous life, against the Laws of the Country, against a former obligation, or in any other respect unlawful, such an oath ought not through any hope of profit, or fear of danger; to be either taken, or performed. This presumed, I say, that a slight and empty fear ought to be contemned by a valiant man, (that is by an honest; for he cannot be honest who is not valiant) and every oath of this kind to be constantly and boldly refused. The righteous are bold as a Lyon, Prov. 26. 1, of which fortitude, he who is destitute can hardly do anything worthy of a good man. For he that observeth the wind shall not sow, and he that regardeth the clouds shall not reap, saith Solomon, Eccles. 11. 4. Nay it can hardly come to pass but he shall do many things unbeseeming a good man; for by the Testimony of the same Solomon, Prov. 29. 25. The fear of man bringeth a Snare. But if any man being overseen, through want of courage, have suffered himself to be ensnared, he hath bound his soul with a bond, and is obliged to perform what he promised.

SECT. XV. Money promised unto a Thief ought to be paid.

The second case is, where fear is great and just, and such as may affect a constant man, as the fear of captivity, loss of all his goods, of infamy, torture, and (which is the King of fear) of death itself. I say first, as before, if the oath contain any unlawful thing, it ought not to

be taken by any honest man, though to save his life, nor taken can be observed without sin. Hearken oh ye Christians unto the golden speech of a Heathen.

The man who's just and steady to Himself, armed Tumults cannot bow; Nor awed by the Tyrants look, Is from his stable purpose shook.

Secondly I say, If a matter be extorted by force, or prevalent fear, which is neither unlawful, nor injurious to any man, but more or less inconvenient only unto the party swearing; as if a Traveler falling amongst Thieves, who with their swords at his breast, should threaten him death, unless he sware unto them to ransom his life, with a sum of money, the party may in this case lawfully promise the money, and ratify the promise with an oath. The reason is, that of two ills proposed, a man may, and a wise man ought to use the less, and the loss of money is a less ill then the loss of life. Thirdly, I say, that this oath obligeth, and that the money promised unto the Thieves, is in any wise to be paid: which though it seem to have been said sufficiently manifest; yet because this assertion hath considerable adversaries, and amongst them Cicero, a man of singular judgment, and as rightly principled in all that concerneth the bond of an oath, (this, one thing excepted) as was possible for a Gentile; it will not be wide of our purpose to confirm this assertion with some reasons. First, therefore he who sweareth a lawful and possible thing, is bound to perform it: but to pay money promised unto a Thief is neither unlawful nor impossible: therefore he is bound. Secondly, he chose that which then seemed unto him best, and which if one of the two were now necessarily to be taken by him he would choose again: wherefore it seemeth that what was prudently chosen cannot honestly be refused. Thirdly, that which was promised to a certain end, ought by the party promising to be performed, when he hath obtained his end. Because every contract

upon condition, that condition being performed, ought also to be performed; which is the very basis whereupon the obligation of conditional vows is supported; But he who contracted for his ransom with a Thief, did it to the end that he might redeem his life; therefore having redeemed his life, and enjoyed the end at which he aimed, he ought to perform that which he promised. Fourthly, the wisdom of the flesh ought ever to be suspected, as an enemy unto the purity of the heart, and a trap unto the peace of the Conscience; and what is the wisdom of the flesh if this be not, where profit seemeth to strive with honesty, nay honesty being rejected, profit to be embraced? That man will not much trouble his mind, whether money promised be to be paid, who esteemeth Faith and Religion beyond riches; and quietness of mind, beyond all worldly gain. Fifthly, Regulus and others, (as hath been said) who kept their faith with enemies, though upon the hardest conditions, are celebrated by Heathen Writers: And Cicero himself commendeth Pomponius the Tribune, who performed that whereunto he sware compelled through fear, adding this applause, So much in those times was an oath esteemed.

SECT. XVI. Solution of objections.

But they who are of another opinion object: First, that enemies are of a different nature from thieves, and pirates. For say they, we may deal with enemies as we do with adversaries, with these by the Civil Law; with those by the Law of Nations; and therefore faith ought to be kept with them, but with thieves, enemies of mankind, there is no society of law, and therefore none of faith. I answer first, skillful Lawyers affirm some legal rites of society to appertain even unto thieves, of whom if we should borrow money, it ought by the Law of Nations to be restored; wherefore a pari, promises made unto them

ought to be performed. Secondly, though no performance were due unto the thief, as a person unworthy thereof; for which reason, breach of bare promise might perhaps be more excusable, yet ought we at least to perform our faith unto God. Secondly they object, that through such contracts honest men may be undone by rogues, which would be a public mischief. I answer, nay rather the lives of honest men saved from rogues, which will be a public good. But, Thirdly say they, by this means robbery and rapine would be established, whilst thieves pass not only unpunished, but rewarded. I answer, if it be so, it's so only by accident, through their vice, not his who doth not any way help the thieves, nor approve of their fact by promising, nor approveth of it by performing his promise, but rather in providing for his own safety, prevented so much of their wickedness, that they remained thieves only, and not murderers. Fourthly, they object, that the obligation of an oath ariseth from a deliberate act of the judgment and will, where the will therefore is so far from freedom, that its action may rather be called coercion, there followeth no obligation. I answer, and it is confessed by all, that the will cannot be forced. There may indeed be coercion, in respect of an external and remote principle of action, but in respect of the nearest principle, which in all human action, is the will; there can be coercion. He therefore who maketh an oath unto a thief, that he may save his life, doth it willingly with an unwilling mind, wherefore this kind of oath is not simply, but mixedly involuntary; that is to say, an action partly unwilling, because it is not done willingly, partly voluntary, because it is done with election, though not the freest, yet free enough to deserve the name rather of voluntary, then involuntary, because choice of two things being granted unto the agent, it is in his power to take which he had rather: And he willeth, who had rather. He therefore is not truly said to have sworn unwillingly, who when he might have let it alone, chose rather to swear. For death being threatened except he would swear, it was left to his choice, whether

he would rather suffer the mischief threatened, or be redeemed from that mischief, by the obligation of an oath. He considered, he chose to be obliged, therefore he would be obliged; and he who confesseth that he would be obliged, argueth absurdly that he was constrained; and therefore is not obliged. Fifthly, they object, that the Traveler oweth the thief nothing, and therefore is not bound to pay him anything, seeing as hath been said, all obligation relateth unto some debt: now that nothing is owing unto the thief is proved, because no right can be founded upon injury, and it seemeth to be most unjust, that a man should by his injurious fact acquire any right unto himself: therefore unto the thief, who terrified the traveler, and contrary to the duty of an honest man, extorted from him an unjust oath, no right accrueth; and so neither is the party sworn obliged. I answer, a twofold obligation may arise from an oath: one unto the person, to whom the oath was made, as a party; the other to God, by whom the oath was made, as witness, and revenger. Many things may hinder the former obligation, so that he to whom the oath was made, may acquire no right nor anything in conscience be due unto him from the party sworn: and from this kind of obligation, and debt proceedeth the objection. But the obligation ceasing in respect of the man, who offered injury and violence; yet the obligation made unto God remaineth; to whom irreverence is offered when a man admitteth of an oath which he intendeth not to fulfill; and injury, when having admitted of it, he regardeth it not.

SECT. XVII. Whether silence promised unto a Thief be to be kept.

One case yet remaineth peculiar unto this place, and that is where a man falling amongst thieves, to save his life, is constrained to promise them silence by an oath; that is, never to reveal their theft

unto any man, or to discover their names unto the Magistrate. It is very hard to determine anything in this kind, saith Frederick Baldwine, late Professor at Wittenburg; yet addeth, that he thinks it safer that the person keep not the silence promised; but discover the matter unto the Magistrate, albeit he have sworn to the contrary. It seemeth he is of opinion that the oath is not obligatory, but the three reasons he giveth, as he proposeth them, barely, and briefly without further confirmation give me no satisfaction. First, he saith, that this oath is of an unlawful thing. If so, there is an end, other arguments are needless. But this he taketh without proof for granted: If it be thought unlawful, because it's the duty of a good Commonwealths man, to give notice of lewd persons unto the Magistrate, that so they may receive condign punishment; it is granted, but it doth not therefore follow that it is always sin, not to give notice, seeing the affirmative precepts of duty oblige not simply unto the performance of the same, but when we are able, and it is required by the exigence of circumstances. Secondly, he saith, that such a kind of oath seemeth to have a certain kind of Collusion with the thieves, which is pronounced so timorously as showeth he had not much faith in this argument, [Kind of Collusion, a certain kind, and seemeth to have]. Which whether it be true or not, who would undertake to prove, that it is not lawful for a Traveler, if to the apparent hazard of his life, he fall amongst thieves, to do something which might seem to have a certain kind of Collusion with them? That which he bringeth in the third place, the impediment of Justice, encouragement of wicked persons in their impiety, occasion of leading others into the like hazard of their lives through such silence, would be prevalent indeed, if the Traveler were gotten out of their hands safe and unsworn. But we suppose, except he had sworn, he had been slain. I ask therefore whether in such certain danger of life, was it lawful for him to swear, or not lawful? If not lawful, (and certainly the two first arguments either prove that or nothing) he had perished; and who then should

have given the Magistrate information of the thieves? The inconveniencies which are objected from this silence, might they not (seeing dead men are enjoined perpetual silence) be objected from his death? But if it were lawful to swear, then it is also lawful to keep the oath, except some emergent accident as it may fall out, unexpectedly do render the thing lawful when it was sworn afterwards unlawful. Let this therefore, till the contrary be proved by stronger arguments, remain both in this case and the rest, where deceit, fear, tyranny, and the like are exercised; That an honest man either ought not to swear at all, (which if the thing itself be not unlawful seemeth hard in imminent, and apparent danger) or ought religiously to observe his oath. And thus much for the Efficient cause of oaths. In which I was desirous to have been briefer, if the matter would have born it; My discourse hath increased upon my meditations, beyond what I expected, and yet whilst I study brevity, I have willingly omitted many things whereof I might profitably have spoken.

The Fifth Lecture.

Of the External Form of an Oath, Containing ten Cases.

SECT. I. Oaths by signs only without words.

The Material and Efficient causes of oaths have been handled in the foregoing Lectures; We come to speak of the Formal cause. Now the form of a thing being either external or internal, the cases of this Classis are so under two heads to be divided, as may bring those

things which appertain unto the words, or signs of an oath, because they are received by the interior senses, under the name of External form; and those things which appertain unto the sense and interpretation of the same, which is the work of the mind, under that of Internal form. An oath in respect of external form, consisteth of signs only, or of words only; or of both: wherefore the first doubt is of the oath which is made by signs only without words. There have been, who have thought, except the words I swear, or the Name of God be expressly used, as I swear I will perform it, by God I will do it, I call God to witness, So God help me, or the like, that it is but a bare promise, and no oath; and therefore obligatory under peril of falsehood only, not of perjury; so that he who fulleth not his promise, which ought also to be performed, is guilty of violated faith, but not of a violated oath. And amongst the Casuists, Bartolus is said to have judged words, at the least some, so necessary unto an oath, that unless the testimony invoked were in express words pronounced, it could not formally be an oath, nor under that name obligatory. But these two opinions are worthily rejected by all. For seeing words are but interpreters of things conceived in the mind, whereof they are characters, if it be possible for those things conceived, (though perhaps not so conveniently, yet sufficiently) to be signified by other means, as writing, nods, signs, &c. to the understanding of others; no necessity enjoineth the use of words. So mutes, they who have had their tongues cut out, and such as lie speechless upon their death-beds, when they contract Marriage, make their Wills, or perform anything which cannot be done without a clear and undoubted signification of their assent, which they are unable to express by word of mouth, use by nods, by lifting up the hands or other signs, to signify their answer unto the question asked. Which signification is no less valid unto all intents and purposes of the Law, then if it had been expressed by word. And it is the very same in an oath, to which so God be any way invoked witness,

whether expressly by word of mouth, or tacitly by any signs, whereby the persons whom it concerneth, may manifestly perceive that the party desireth as in the presence of God to engage his faith, such an act is both formally an oath, and fully sufficient to oblige the conscience, according to that verse which Stobaeus bringeth out of an old Comedian.

The oath is firm, if I but give a nod.

He is therefore very much deceived, and his own impostor, who thinketh himself either free from, or more loose in his obligation, because he uttered no word that might express an oath. If to another asking him a question, as in the presence of God witness and arbiter, by the manner of his behavior he seem plainly to consent; or if where it may be advantageous unto him, (in respect of some worldly gain) that he should seem to have sworn unto the words of another, he knowingly and wittingly make use of a friend, to witness though falsely that he hath so sworn, he hath bound by that fact his soul with a bond, and ought no less to do according unto all that which proceeded out of the mouth of the party asking or requiring; then if it had proceeded out of his own mouth: if the thing be lawful, he must perform it; but if he know it to be unlawful, he cannot by this trick evade perjury.

SECT. II. Oaths by the Creature.

Furthermore as oaths may be sworn by signs only, without words, so they may and most commonly are by words only, without signs; as appeareth by those rash ones, which slip out in common discourse, and others. Now the words of an oath may be considered yet two ways, either in respect of the things by which it is sworn, or

according to the manner of expression, and form of speech in which it is sworn. Wherefore the second doubt is concerning the obligation of an oath, in respect of that whether person or thing, by whom or which it is sworn, where two cases occur. The first ease is, whether he who sweareth by the creature be, and how far he is obliged? That oaths by the Creator are binding is most certain, and generally granted; but of oaths by the creature there is some doubt: Nevertheless by way of answer, I say first, that to swear by a creature absolutely, ultimately, and terminatively so as to constitute the end, and strength of the oath in any creature without relation to God, is simply unlawful: The reason is manifest, because by that means the reverence due unto God only, is given unto the creature. For an oath, as hath been said, is *Cultus Latriae*, which ought not to be given to any creature, for as much as the party swearing, by invocation of God as witness, and revenger, acknowledgeth him *ipso facto*, searcher of hearts, to whom it is known whether the mind agree with the words, and the most just and powerful punisher of sinners, whereof neither is in the power of any created thing. Nay such an oath were even by the concession of Papists apparently idolatrous. Secondly I say, to swear by the creature relatively, and as it were transitively, as Papists use to do by the blessed Virgin, or other Saints, or relics of Saints, that is (as they expound it) not ultimately and terminatively to place the worship upon them, but relatively, and transitively, to pass it by, and through them upon God, is at the least superstitious; because it appeareth neither by light of reason, nor testimony of Scripture, that the power of searching hearts, or punishing perjury, is by God entrusted with, or delegated unto any of his creatures how holy soever. Thirdly I say, to mention any creature in swearing without mention of the Name of God, as if a man should swear by his head, y his soul, by his salvation, by this fire, by this bread, &c. (though for the danger of scandal, and show of evil, it were much better to abstain from such forms, yet) merely for this reason, that we ought to

swear by God only, is not unlawful. Because either in these forms we swear not at all, or by God only. Which that it may be the better understood, lest I should seem to bring some new, and suspected doctrine into the Church, or to be indulgent unto that execrable custom of swearing by the creature, which to the grief of good men is grown so common; It is to be noted, that in forms of this kind, wherein mention is made of some creature, as it were by way of swearing, that the oath nevertheless is in truth often sworn interpretatively by God himself. As in all those which after the common manner of utterance have in them a kind of execratory sense, Upon my soul, Upon my salvation I will do this or that: where the sense is, Let not God bless my soul, Let not God give me eternal Salvation, if I do it not. And in those also wherein such things are nominated as are apt to stir us up unto some remembrance of God; as when the Jews anciently sware By heaven, By this holy sacrifice, &c, meaning By God whose Throne is in Heaven, By God unto whom this holy Sacrifice is offered, &c. But where the names of such things are used, which have not in their nature any specially or obvious aptitude of raising us unto any thought of God, nor seem to imply any execratory sense, as if a man should swear at the table, or at the chimney, By this bread, By this fire, &c. though by the manner of the expression, these forms may seem to be a particular kind of oath, yet in truth, and interpretatively they are not oaths, but rather mere obtestations, as anon in the third doubt shall be more fully explained. Fourthly, I say, every oath made by the creature, whether lawfully or unlawfully, that is, whether it be terminated in the creature (as the worship of Images is by the vulgar Papists) which is Idolatrous, or sworn by the creature transitively, that thence mediately, and ultimately it may extend to God, (with which little trick the Popish Doctors endeavor to defend their Image-worship) which nevertheless is superstitious: if it be really and formally an oath, and not an obtestation only, obligeth no less the party swearing

unto the performance of his promise, then if he had sworn in express words by God himself. The reason is, because in every oath truly and formally such, God is in some sort invoked witness. Fifthly, I say, though by that perhaps which I have now said, this kind of oath may in some sort be defended, as not simply and generally unlawful, at least if it be understood, as I have expressed it: yet seeing it is certainly no less obligatory then other oaths, and that no necessity enjoyneth the use of it; (because where it is expedient to swear, we may use other forms, and where it is not expedient, we ought not to swear at all) It is the duty of that Christian who would seriously provide for the peace of his own conscience, wholly to abstain from this kind of form. Whereunto they will easily be persuaded who shall thoroughly consider the Original, or issue of the same. It's Original it oweth partly to the Idolatry of the Chaldeans, Egyptians, and other superstitious Nations, who sware by the Sun, the Fire, and other creatures which they esteemed God's; partly unto the reverence of the Divine Name and Majesty amongst the people of God, which happily in the beginning just and pious, in process of time degenerated by degrees into superstition, the debauchery of oaths so heightened by evil custom, that ordinarily they chose rather to swear by obvious things, then as Philo saith, to have recourse unto the Creator, and Father of all things. The same practice amongst the Antient Greeks, (most of whose rites and manners may easily be tracked from emulation of the Hebrews) is observed by Interpreters of the Greek Poets, who write that they were not ordinarily wont to swear by the God's, but by such things as were next at hand, or before the eyes, as Bread, Fire, Water, Fowl, Serpents, and the like: But that which seemeth to have been begun in reverence of Divine power, is at length shrunk unto so great irreverence and contempt of the same, that through the craft of the Devil, and just judgment of God suffering sin for the punishment of sin; piety degenerated into superstition shot up again into open impiety. For when once they

began to abstain from the name of God, and swear by the Creature, licentiousness of oaths would admit of no bounds; nor stand in any awe of perjury; A Poet elegantly decides the perjury of a Prince.

Who thought his Scepter not the God's. He thought it lawful having sworn by his Scepter, to do otherwise then he ought to have done, had he sworn by the God's. Augustine saith of the Manichee's, they sware frequently by the creature, and without any scruple. That amongst the Jews, from the time this custom of swearing by the creature waxed strong, the reverence of oaths decayed very much, is most apparent by the words of our Savior, Mat. 5. and 23. Which two places laid together afford a sense, tending to the correction of a double, (perhaps a treble) error. First, that the Jews granted unto themselves, so they abstained from the Name of God, liberty of swearing in every trifle. Secondly, that they thought it no sin to swear though by God, if that were true which they sware. Thirdly, that whilst they sware but by the creature and not by God, they thought a falsehood no perjury: for so they perversely interpreted that place, Thou shalt not for swear thyself, but shall render thy oaths unto the Lord. Wherefore Christ teacheth that oaths taken not in the Name of God, but of creatures, are as truly oaths, and as fully obligatory as those wherein God is expressly mentioned. And thus much shall suffice for the former case.

SECT. III. Oaths by Idols.

The latter case is of an oath made by Idols or false God's. For solution of the doubt in this case, First I say, that such oaths are simply unlawful, apparently Idolatrous, and expressly prohibited by God; for they direct the true worship due unto the true God only, unto God's which are not true; contrary unto the precept, Deut. 6. 13.

Thou shalt fear the Lord thy God, and serve him, and swear by his Name. And God himself grievously upbraideth his people with this sin, Jer. 5. 7. How (saith he) shall I pardon thee for this? Thy children have forsaken me, and sworn by them that are no God's. Secondly I say, that such oaths oblige upon pain of perjury, and ought to be observed, and that he who hath violated his faith so given in a lawful thing, is perjured; so saith Augustine, Because he hath sworn by such as he ought not, and done contrary to his oath, that which he ought not to have done, he hath committed double sin. And again, he who sweareth by a stone, if he swear a falsehood, is perjured. You may perhaps object, that this wherein God is not invoked witness, seeing a false God is no God, can be no oath, and therefore is not obligatory. I answer, though a false God be indeed no God, (because as truth and ens, so falsehood and non ens are convertible) he is nevertheless a God in the opinion of him who sweareth; which is sufficient to induce obligation. And therefore such a one ex Hypothesi is a true oath; to wit, the erroneous Conscience of the party supposed; forasmuch as he is bound in conscience to perform the thing which according to the judgment of his conscience he hath confirmed by an oath. Where faith sworn by a false god is violated, injury is done unto the true God. Because the party swearing, Though under false marks, yet by a general comprehension reflecteth upon Divine power. Whence Augustine, The stone doth not bear thee speaking, but God punisheth thee not performing: alluding, as I conceive, unto the solemn rite of the Romans, where the party swearing held a flint in his hand, and pronounced these words, If I knowingly deceive, let Jupiter cast me from all good men, as I this stone; which said, he threw the stone immediately from him; and they who had performed this ceremony, were said Jovem Lapidem jurare. He therefore who forswearth by a false god, shall find the true God revenger of his perjury, and contempt of Divine Power, and Religion, saith the Author of the Book of Wisdom. Nay

Augustine is so confident, that he feareth not to affirm it less evil to swear by a false god truly, then by the true God falsely. Which speech of his may not be understood at large, and upon the whole matter, but strictly as to the falsehood and perjury, which in that place are only considered. Thirdly I say, upon the obligatory power of this kind of oath, dependeth the solution of that question which was put by one Publicola unto blessed Augustine, handled at large by the Author, in his whole Epistle, 15. 4. Whether it be lawful to require an oath of one who we know will swear by Idols. Augustine holdeth the affirmative, and proveth it first by example of Abraham, who confirmed the League contracted with Abimelech by oaths mutually given and received, Gen. 21, and of Jacob's Covenant made with Laban, Gen. 31. Then by reason, because otherwise there would be no convenient means whereby Leagues might be made, and public faith, and peace preserved with Idolaters: nor doth the true God anywhere forbid the good use of faith, though wickedly sworn by false gods. If it be said, that this were to partake of another's sin: Augustine answereth, we do not by this means associate ourselves with him who sweareth by false gods, Devils, in the evil of sin, but in the good of his contract, whereby he engageth, and performeth his faith. And so much for the second doubt.

SECT. IV. How to know whether a man have sworn or no.

The third doubt followeth, which considereth the manner of expression and verbal form of an oath. The reason of the doubt is, that seeing every oath, truly, and formally such, obligeth under guilt of perjury, but not such forms as are not oaths: it were needful we should be able, amongst those forms which seem to be oaths, by some note or character to know which are, and which are not

properly, and formally oaths. In which matter I confess, of so many of the Casuists as in this straightness of time I could peruse, I find none satisfactory, some of them touching this question lightly; others handling it indistinctly. To the end therefore I may propose something concerning this point more distinctly, as my hast to other things will permit; It is to be noted that unto a bare assertion or promise, some confirmation of faith is usually added, and that by Asseveration, Obtestation, or by an Oath: which three albeit they may seem little distant, and rather to differ in degree, then kind; nevertheless intrinsically, formally, and specifically they are each distinct from other. It is true, this distinction, through their affinity, the end at which they aim, and words whereby they are expressed, is oftentimes so obscure, that it is very hard, either not altogether to confound them, or skillfully and dexterously to distinguish them. Wherefore that every one of these may be the better discerned from other, four things, which may serve as trials of every form of speech, whether it be an Oath, an Obtestation, or mere Asseveration, are to be considered, viz. The form of words, the proper and genuine sense of the same, the custom of the Country, and the intention of the party swearing.

SECT. V. The first trial, the form of the words.

First, it may be sometimes sufficiently apparent, by the very Form of the words, whether a man have sworn or not. Swear unto me that you will give me a hundred. I swear; or By God I will: or I promise Before God I will: or As God help me I will give you them. If any of these, or the like, be answered, it is an oath, whosoever useth such form, is ipso facto obliged; and if he perform not the thing promised, guilty of perjury. But in this, now, Will you give me a hundred? I will

give you them, the very words adding no further confirmation of faith, make but a bare Promise. You told me you would give me an hundred; will you give me them? Certainly I will: Believe me I will not deceive you. Here some kind of confirmation is added unto the promise, but it is plain by the very form, that this is but a mere Asseveration, neither an Oath, nor so much as an Obtestation, seeing God is neither called to witness, nor any other pawn of faith engaged. How shall I know that you will give me that hundred which you promised? Here's my hand, By the faith of an honest man, I will give you them; As truly as the Sun shineth, I will do it; Never believe me more, if I doth not, &c. The words themselves show that they contain more than a bare asseveration, but they are not an oath yet. These therefore are rather Obtestations, wherein for further Confirmation of a matter promised, or assevered, we interpose something which is dear unto us, or certain, and manifest unto all, as a pawn of our faith. Wherefore if it plainly appear by the mere form, that the thing assumed for confirmation of the promise be properly an Oath, a bare Asseveration, or an Obtestation, there needeth no further examination.

SECT. VI. The second, the force of the words.

But because it happeneth very often through the resemblance of some ambiguous or large signification of a word, or some other cause, that it cannot certainly be judged by the words uttered, whether it be an oath or no; in the second place, we must be attentive unto the proper and genuine sense of those words, and from thence make the Judgment. For it may appear by the forms, that all those speeches which appeal unto the Name of God; or wherein the Greek <H&G>, the Latin Per, or the English By, are used, with the

accusative case, are formally oaths. Led by which reason only Soto conceived, so much difference between the terms, By my faith, and In faith; By my troth, and In troth, that he determined those to be formally oaths, these none. But if the genuine sense of the words be well looked into, there will be no difference between the Propositions, By and In, being applied unto the same thing; for we are to judge of them, as the thing they are applied unto is Sacred or Civil. The form By God, is properly an oath, by virtue of the words: for the Name of God is a sacred thing, and he who speaketh after that manner calleth God to witness. But that By my faith, (though by the custom of some Country, or intention of him who speaketh, it may be an oath) is no oath by virtue of the words, but a mere Asseveration, or at the most an Obtestation. Because human faith is not a sacred, but a civil thing; and he who speaketh after that manner, calleth not God to witness, but speaketh as he believeth, or declareth, that the thing is uttered with serious and sincere deliberation of mind. For the genuine Interpretation of the words, By my faith, whether in an assertory or promissory matter, is this, I speak from my heart; I tell you my very thought; I pawn my faith to you that the thing is so; If to my knowledge I deceive you, let me never be believed more, &c. Wherefore the interposition of faith, maketh not an oath by virtue of the words, unless perhaps it recall us to some oath which we have formerly made. As in this University, when a man is required to answer unto a question, by virtue of his Oath, according to this form, You shall speak by your faith given unto this University. And when Convocations are solemnly called, whereunto the Doctors, Masters Regent, and Non-Regent, are warned by the Beadles to repair, Per fidem, per fidem, per fidem. The like in my opinion, (though others I know think otherwise) is to be said of that of Paul, By our rejoicing which I have in Christ I die daily; to wit, that it is properly no oath, but a serious asseveration only, that as he was subject unto death, so

he was daily prepared for death, when it should please God to call him.

SECT. VII. Of Josephs form; by the life of Pharaoh.

Now it may perhaps by so much as hath been said, be conveniently determined, what is to be thought of those words, whereupon Interpreters variously dispute, of Joseph unto his Brethren. By the life of Pharaoh ye are Spies. Some are of opinion that Joseph having been long conversant with Pharaohs Courtiers, as infected with a touch of their disease, began to savor at the least in this point of their manners and example, the Egyptians being accustomed to swear by the Kings life; as the Romans in latter ages were by the Genius of the Emperor. But I cannot easily suffer myself to judge otherwise of the words and actions of men famous for piety then necessity compelleth. I see divers of the Ancients in contributing unto the fame of the Saints, too indulgent unto their own wits, whilst they would cover apparent defects, with specious excuses. An error much more pardonable than theirs, who in this Age delighted with the contrary, love to be curious inquirers into the faults of devout men; and lest matter should be wanting unto calumny, by perverting blameless actions, bestow cracks upon Crystall glasses, as it were in the washing. Others allow a more favorable Interpretation unto the speech of Joseph, that he used for once only this form of swearing, familiar unto the Courtiers, as an accomplishment of his disguise, and that he might more skillfully represent the person of an Egyptian Prince, which he counterfeited, lest he should be discovered by his Brethren. But I do not like to lay this burden, though somewhat lighter, upon the shoulders of the most holy man without any necessity. The third opinion is theirs, who absolve Joseph from all

guilt; but with this reason, that they think it was lawful for any man before Christ forbad that kind of oath, to swear by the creature. Which opinion I confess so far, as it acquitteth Joseph of sin, I allow; but of the reason for it I cannot allow. For first, it appeareth not that Christ did more especially forbid oaths by creatures, then such as are made by God; for he generally prohibited the unnecessary ones of either kind. A new prohibition of that which was always unlawful, would have been needless: And that which he spake of oaths by the creature in particular, tendeth to show that this kind of oath once made contrary to what the Jews thought of it, is no less obligatory, then those which are made by the Name of God expressed. Secondly, neither is it true, that it was lawful before Christ for pious men by any dispensation, or divine indulgence, to swear by the creature, seeing that worship is due unto God alone; as from Deut. 6, and Jer. 5, hath been proved; which latter place, though perhaps it peculiarly concerned them who swear by Idols, and false God's: yet the strength of the argument which the Prophet useth, generally taken, comprehendeth them also who swear by creatures; seeing that it may likewise be truly said of creatures, that they are not God's. Thirdly, the nature of an oath, as appeared by the definition thereof, showeth sufficiently that it was never lawful to swear by creatures: Heathens themselves confessing that divine Invocation belongeth unto the essence of an oath. Which things being so, and this reason insufficient to excuse Joseph of all crime: the fourth opinion followeth, which explaining the genuine sense of Josephs words, supposeth him not to have sworn at all, and therefore not to have sinned in swearing amiss: For if he sware by the life of Pharaoh, either the life of Pharaoh was invoked as witness, which were ridiculous to think; or contained some execratory, or imprecatory thing in it, which what it could be without a very harsh and forced Interpretation of the words, is not easy to divine. But the sense of his words will be very plain, and easy, if they be expounded by an

Indicative speech, thus; By the life of Pharaoh, ye are spies; that is, as true and certain as it is that Pharaoh liveth, so true and certain it is that ye are spies; like that, By this Sun that shineth I tell you true, which is as much as to say, this is so true with I tell you, as it is true that the Sun shineth. Whereof neither in my opinion is formally an oath, but an asseveration rather confirmed by a vehement obtestation. I am not ignorant that much may be said for the contrary, which though it be not of weight to make me alter my judgment; nevertheless it is of weight to make me think it fit that every man should be left freely to his judgment, provided he condemn not another's, and grant me this, That it cannot at least by virtue of the words, except it appear by other means, be clearly proved that Joseph sware, seeing the words contain no Invocation of witness, nor of vengeance.

SECT. VIII. Third trial, the custom of the Country.

The third trial whereby an oath is to be known, is the custom of the Country, place, or Community. For there may be some speeches which neither by their Form, nor force and natural sense of the words appear to be oaths, yet through received use in some Nation and common estimation may be accounted oaths; as on the other side, such as by the tenor of the words a man would take for oaths, may be esteemed no oaths. The reason is, because the value of words, is like that of money, not by Nature, but agreement, or rather use: that is, their worth is accordingly as they are esteemed. To find an example thereof, we need go no further than some of our own forms: for whereas Faith and Truth (especially as to this purpose) are words of the same signification and efficacy, in as much as he who is void of truth, is void of faith, and he who is void of faith, is void of truth also.

Nevertheless our Countrymen through long use are possessed with an opinion, that he who says, In faith, sweareth, and he who saith, In truth, sweareth not; as also that In Truth is but a mere asseveration, and By my troth, an oath. Of which things it were a folly to demand other reason than custom;

To whose Arbitrament belongs, The right, the Law, the rule of tongues.

Whence it follows that he who whilst he looketh only at the form or force of the words, taketh the liberty in common discourse of such kind of speeches, without discretion, or scruple, as have by long use obtained amongst us the force and estimation of oaths, violateth the precept of Christ against swearing; scandalizeth his brother, and exposeth himself unto the danger of perjury.

SECT. IX. Fourth, the intention of the party swearing.

The fourth and last trial whereby an oath may be known, is the mind, and intention of the party swearing. For be it so, that a form of speech appear not by the words themselves, nor by the common estimation of men to be an oath: Nevertheless if a man using such a form, either through mistake imagine himself to have sworn, or through some deceitful intention would be thought to have sworn; that form, though it be not really, and in itself an oath, will have nevertheless as to that man, the full obligation of an oath to all effects; and if he violate his faith so given, he is guilty at the Bar of Conscience, not only of falsehood, but perjury: for as by the judgment of the Apostle, he who esteemeth a thing common or impure, which in itself is not impure, maketh it nevertheless impure as to him; and is bound to abstain from it as if it were really

common, and impure. So by the rule of contraries, he who esteemeth a thing holy, which in itself is not holy, maketh it nevertheless holy as to him, and is bound to abstain from it as a thing really holy. And if error in the understanding excuse not from obligation, much less may deceitfulness in the will: Because it is most just that an impious and fraudulent man, should fall into the pit, which he digged for his neighbor, and that his feet should be caught in the snare which he set for another.

SECT. X. The use of the said trials.

The use of the four trials which I have explained, is this, that to know when a question or scruple of Conscience ariseth concerning any form of speech, which seemeth to be an oath, whether or no it be truly and formally an oath, and consequently contain the force of obligation? Recourse may presently be had unto these trials, and the examen of the form made by them as Diagnostic signs, and that in the order which I have proposed, beginning with the first, and running through the rest, as there shall be occasion; that is, except the examen appear sufficiently made by the way, to show it to be an oath. For that which is an oath, may appear to be but an affirmation, by the examination of someone mark; but it cannot be denied to be an oath, till the whole examen be perfected through every mark. The ends of this examen are two, the one before the oath, that a man may bethink himself, whether it be fit to use such a form, or no? The other after the form used, that he may understand how far he is obliged.

SECT. XI. The solemn rite of an oath.

Our discourse hath been hitherto of such oaths, as are made by signs without words, or of such as are made by words without signs; we come now to speak of such as are compounded of both. Now signs are joined with words, for the greater either solemnity of the act, or dignity of the person. Wherefore a fourth doubt is concerning a solemn oath, where the first case, or first question is, of the Rites and Ceremonies used in solemn oaths. Of the rites of the Gentiles many have written many things, which elsewhere to recite were not worth the while, much less to our present purpose. Alexander Neopolitanus taketh notice of some of the chief of them; Those were esteemed most sacred, where touching the Altars of the God's, they sware in conceived words; and those next, in which they sware *Jovem lapidem*. Now they are said to sware in conceived words, who either all repeat the formal words of an oath, or someone, the rest signifying their consent unto his words, by some word or sign. Holy Scripture maketh mention of two rites especially amongst the ancient Hebrews. Whereof one was peculiar unto such oaths, as Superiors by their authority required of their inferiors for the faithful performance of their commands. The first example of this kind is Gen. 24, where Abraham requiring an oath of fidelity from his servant concerning the choice of a wife for his son, commandeth the servant to put his hand under his thigh. The like Jacob upon his death bed commanded his son Gen. 47, when he committed his burial in the land of Canaan unto Joseph's care. Which rite whether observed in token of faith, whereby they believed in the blessed seed, which was to come from the thigh of Abraham; or in Commemoration of the Covenant which was made with Abraham when he was circumcised; or for any other cause, we find not founded upon any express command of God, but to have been for ought we can gather of free Institution. By which the perverse and superstitious severity of those men, who blame all rites in Divine Worship as execrable and abominable Idols in the Christian Church, which for decency and order sake are instituted by

human authority, without the express precept of God, is the more to be admired. The other rite amongst the people of God was elevation of the right hand towards Heaven, during the act of swearing; and this was used in oaths voluntarily taken, and not by command of others. Which rite whether through imitation of the Hebrews, as in many other things; or by a kind of natural direction, looking towards the God, whom they believed to dwell in the most high place; the people of most Nations have observed. And of this as of the former, we have the first example in the story of Abraham, Gen. 14, but no more founded for ought we know upon any special command of God than the other. Nevertheless the use thereof increased so much upon posterity, that by a Metonymy of the Adjunct, we find the phrase of lifting up the hand, frequently put for the act of swearing, yea and the word <H&G> which properly signifieth the right hand, is not seldom taken for an oath by the Hebrews and Arabians. Whence some of the Interpreters understand those words, Psal. 148. 11, to be spoken of an oath; Whose mouth speaketh vanity, and their right hand is a right hand of iniquity, or rather of lying and falsehood; for so properly the Hebrew words <H&G> signify. Yea even God himself, where he is represented swearing after the manner of men, useth that kind of speech, I lift up my hand to heaven, and swear by my right hand, Deut. 32. 40. To this rite are frequent allusions in the Prophetical Books of either Testament. And here we have another occasion of wonder, that this Ceremony should not only be tolerated in Christian Churches, but approved by those very men, who are so far from approving the use of other rites of the Old Testament (though they be all alike lawful or unlawful amongst Christians) that they will not endure them, but cry out importunately to have them banished from all devout Congregations. As concerning the rites of Christians, that I may omit the rest of the various Ceremonies used in the primitive Church, and according to the differences of times and places variously observed: There is one which derived unto us

from the Primitive times is yet in use, viz. to swear in conceived words, laying the hands upon the holy Gospels of God. And this kind of oath, in which besides the pronunciation of the words, some visible external gesture of the body is used; as touching the Altar, the Thigh, the Book, casting away the Stone, lifting up the Hand, and the like, is usually called a Corporal oath.

SECT. XII. Whether solemnity increase obligation.

OF these rites which are used in solemn oaths, the second case, or the second question is, Whether, and how far they strengthen the obligation of an oath: that is, Whether a solemn and corporal oath have any greater strength of obligation then a simple oath; whence the violation of the one might contract heavier guilt, then that of the other. In answer, I say first, that it is granted, by Casuists, not only of the Romish party, but also of the reformed Churches, that the solemnity of the act aggravateth the sin of an oath, as well as of a vow, seeing oaths and vows are in most things alike, especially in their obligatory virtue. To swear corporally is more then by writing or bare speech, saith one of them; and another, By how much the solemnities are increased, by so much greater is the perjury. Secondly I say, although we yield the perjury to be more grievous, yet a solemn oath of itself, and in its own nature, is not more obligatory then a simple one; because the obligation of an oath, as it is an oath, (for it obligeth also as it includeth a promise, but I say as it is an oath) ariseth precisely from this, that God is invoked a witness, and revenger no less in a simple oath, then in the solemn, and corporal; for the Invocation is made precisely by the pronunciation of the words, which is the same both in the simple and solemn, and not by any corporal motion, or concomitant sign, in which the solemnity of

the oath consisteth. Wherefore, Thirdly I say, that solemnity aggravateth the sin of perjury is accidental, but yet necessarily and inseparably, not contingently; and that for two reasons. First, in respect of the greater deliberation. For to this end is the solemnity of external rites ordained, that it might strike the mind with the greater reverence of the act, and as it were sense of Religion, to the end the agent might be bent upon the act with the greater attention and deliberation: and every sin *caeteris paribus* is the more grievous, by how much it is against the more deliberate and precedent act of the will. Secondly, the perjury of a solemn oath is the more grievous, because it giveth the greater scandal. For with the more solemnity a thing is done, the more attentively it is observed by most; and therefore if there be offense in it, the example will be the more notorious and pernicious. Fourthly I say, seeing it is granted to be expedient in an oath, which is part of God's Worship, that for the greater reverence of the Act, a certain solemnity of rites and Ceremonies should be used, as also a prescribed form of words; it seemeth that no just reason can be given, why both the moderate use of solemnity, and a certain form of words should be banished from the other parts of public Worship. I confess though I have thought upon the thing with myself, and inquired much of others, I could never yet find out, why these should not be taken from oaths, as superstitious additions, or be retained in the rest of God's service, as profitable helps to piety. I leave it to him who can unriddle it: it is beyond my skill.

SECT. XIII. Solemnity of oaths omitted.

The fifth doubt remaineth, which is neither difficult, nor shall be tedious, and it is of an oath wherein some part of solemnity is

omitted, in respect of the dignity of the person: As when an Oath is given unto a Prince, or some great Officer, at his Coronation, or time when he receiveth trust and honor, the ordinary rites (as the Touch and Kiss of the Book, &c.) omitted; the words unto which he is to swear being read unto him, he is only admonished upon the word of a Prince, or upon his Honor, &c. faithfully to observe the same. Unto which admonition, if he moving his hand unto his breast, answereth only that he promiseth, the oath is accounted taken: In this case I say briefly, that the party sworn is no lefse obliged in Conscience, to the faithful performance of the things promised, then if he had pronounced with his own mouth every word, and syllable, and had exactly accomplished the rest of the Ceremonies, and Solemnities. And thus much shall suffice to be said of the external form of an oath. Perhaps ye expected, as I had determined, that those things which appertain unto the Internal form of an oath, should have been comprehended also in this Lecture. But that part containeth some doubts of great use, and moment, and worthy of larger room, especially that part which explaineth in what sense an oath ought to be understood. Wherefore lest I should injure you with too much prolixity, or the matter with too much brevity, I shall do my endeavor that in the next Lecture, together with the final cause, (which containeth not many doubts, nor much difficulty) I may finish that which I have to say of the Internal form.

The Sixth Lecture.

Of the Internal Form and final cause of an Oath; Containing
seventeen Cases.

SECT. I. Of the Internal form or Interpretation of an Oath.

We proposed a twofold form of an oath, External and Internal: the External following the signs and words, which are objects of our External senses we finished in our last Lecture. We come to the Internal, which consisteth in the sense and Interpretation of the words, and is the work of the mind. Now in this place I take the sense of the words not in respect of the Forms, by which we understand a thing to be sworn; for of this we have formerly spoken in the trials of oaths, (when we discoursed upon the outward form) but in respect of the promise confirmed by an oath, and contained in the words. A matter truly of great moment, and manifold use, and in either relation, worthy of your most diligent attention; for it is of much concernment, to know in what sense you swear, because he is forsworn, who performeth not what he promised, in the same sense wherein he promised, or ought to have promised it: and that not in oaths only, but in Vows, Promises, Leagues, Contracts, and all other conventions, wherein it behooveth an honest man that his dealing be fair, and his performance exactly agreeable with the true sense of his undertakings. Wherefore to the point. The words of an oath, are either clear, or ambiguous.

SECT. II. Where the parties are agreed upon the sense of an oath.

The first doubt is of the obligation of an oath, the words whereof are plain, and have a manifest unquestionable sense: where four cases occur. The first is, where the words of an oath or promise, are so clear either first by their proper and ordinary signification: or secondly, by the manner of speech received, in any Country: or thirdly, by mutual consent of the parties, that their sense is fully agreed upon, by the persons interested. For example of the first; I

Gaius promise unto thee Titius, to give thee possession of my Land in Tusculan, if within a months time thou pay me an hundred Crowns. Example of the second; John bargains with Peter for the hundred Marks which I owe you, I will deliver you tomorrow a hundred of my Wethers; Or, for the benefit of your Land, I will pay you the yearly rent of three Bushels of Wheat. In the former of which examples, although a hundred be a word so ambiguous, that sometimes it signifies five score, sometimes six score, yet by the received use of it throughout England, the intention of the parties would be so manifest, that there could arise no controversy about the sense thereof because we all know that an hundred, when we speak of money signifieth five score, and when of Cattle six. So a Bushel in the latter example, is a measure, containing double the quantity in the Northern parts of this Kingdom, which it denoteth in the Southern. So wheresoever the bargain be made, the use of the place will so explain the ambiguity, that plain dealing men could by no means disagree about the signification of the words. Example of the third, Titius desiring to buy one piece of the land of Cains, bordering upon his own having formerly beaten the price, at their next meeting, asketh, Will you sell me your land at the price you set upon it? I will; though no peculiar mention be made of that piece which bordereth upon Titius; yet it is evident by the foregoing discourse, that the same was peculiarly understood. And this kind of oath, obligeth the party swearing to perform his promise fairly, and in that sense upon which without elusion it is manifest the Contractors were agreed. And he who bargained to deliver a hundred Wethers, hath not made good his agreement till he deliver six score.

SECT. III. Whether verbal equivocation avail anything (1.)

The second Case is of an oath, where the words according to their common signification are clear enough, but the party swearing having no will to oblige himself in that sense intendeth another, whereof the words by reason of some ambiguity are not altogether incapable, and industriously concealeth his meaning in such sort, that the Auditors understand one thing, and he another. This is that verbal equivocation, which amongst some other Casuists and Scholasticks, the Jesuits especially maintain and practice; examples whereof are most frequently found in assertory oaths; because by their Doctrine, the chief use of this equivocation is, when a man examined by an impotent Judge, or not legally, or having some other reason to dissemble the truth, fitteth the words unto his occasion, by changing their genuine sense into one more strained and remote from the matter in question. As if a Jesuit apprehended, should swear that he were a Smith, meaning that his name was Smith; or an Apprentice commanded to tell where his Master is, should swear he died a month ago, meaning that he then died stockings. The like may happen in promissory oaths; as if a General having made a Truce with an Enemy for ten days, should give him a Camisado, because in the Capitulation mention was made of the days only, not of the night. Livy and others relate the story of the ten Romans, taken by Hannibal, and after they had sworn upon certain conditions to return unto his Camp dismissed, one of which (saith he, others say two) most unlike a Roman returned the same day, pretending something forgotten, but intending to absolve himself of his promise, and before night overtook his Companions: which deceitful trick of his was accounted so base, that he was not only scorned by the vulgar, branded with ignominy by the censors, but adjudged by the Senate to be taken, and by a public Guard delivered unto Hannibal. Nevertheless Jesuits so vigorously defend this equivocation, that Jo. Molanus Professor at Lovain, justifieth the murder of John Huss perpetrated against the public faith engaged unto him for his safe

Conduct, for this reason, that the Conduct undertook for his safe coming, not for the safety of his return. And now let Jesuits confidently complain of the great injuries done them, whilst we say they hold faith not to be kept with Heretics; for if this be to keep faith, they need not much trouble themselves, with whomsoever it be contracted, whether it ought to be kept or broken. But whole Books of this Jesuitism are largely and solidly confuted by the Reverend Father in Christ, John Morton now Bishop of Duresm, Henry Mason, and other of our Country-men, worthy the perusal of such as desire further satisfaction in this point. In the meantime our result is, that the party swearing after this manner, both sinneth in his equivocal oath, and is notwithstanding that tacit equivocation bound in Conscience unto the performance of his promise in that sense, which the words yield of themselves, and are without constraint apt to beget upon the minds of others: unless he act accordingly, he is not guiltless of perjury.

SECT. IV. Whether verbal equivocation avail anything (2.)

Some reasons of this assertion I have already alleged in the confirmation of our first Hypothesis, I shall now add but briefly a few more. The first, an oath according unto the sum of that Hypothesis, ought to be most simply, and effectually understood; unto which simplicity this artifice of industrious ambiguity is repugnant. The second, it is a great profanation of the Name of God, to invoke him as witness and searcher of hearts to attest the truth of words which agree not with the heart of the party swearing; for what were this if not as far as lieth in man's power to make God, who can neither deceive, nor be deceived, an Impostor and Patron of base dissimulation. The third equivocation is contrary to the very

institution and nature of an oath, whose chief use is to be an end of strife and controversy, and to give as certain security in uncertain things, as human nature is able to afford, it being *Expediendarum litium maximum remedium*. But that certainty which we seek in an oath, is lost in equivocation; for what certainty can there be in his answer, whose meaning is uncertainty? Nor are Controversies thus ended but aggravated. The fourth, the party so swearing deludeth his neighbor, and knowingly deceiveth, contrary to the precept, *Ne juret in dolo*, and to the ancient form, *Si sciens fallo*. The fifth, promise in the promissory is as affirmation and negation are in the assertory, and containeth an answer unto the question, or intergatory proposed by the Deferent, which unless it quadrate and agree with the Intergatory proposed, is no truth, but a lie. For out of the question and the answer springeth as it were one proposition, which must be utterly false, where the answer is made in a different sense, from that wherein the question was asked. Nor doth that qualification to which the Patrons of this simulation fly afford them refuge. To wit, that we may not use this equivocation at our pleasure, but only before an incompetent Judge, such as have no right to require an oath, or who compelleth us to swear without just cause, or exacteth that which is not due, or the like. But to omit that these are but their bare allegations only, not confirmed by authority of Scripture, of the ancient Church, or indeed of good and solid reason, the force of these arguments by which we maintain the contrary, is neither overthrown, nor weakened by this qualification. And although it should be granted, that an unjust force might null that obligation, made to man, because it is not reasonable that an unjust act should acquire any right; yet no injury done unto us by men, can give us just cause to injure God, by casting off that obligation which we made unto him the searcher of hearts, to whom such right by every oath occurreth through the Invocation of his Name. To conclude, this Jesuitical Doctrine licenseth the lust of lying and perjury unto

impious men, notwithstanding that qualification, which though it remain, yet the sole judgment, when it is, and when not expedient to use it, is left unto the party swearing. Wherefore if a man against right and reason be constrained to swear, he ought either absolutely to refuse the oath or to take it in that sense wherein it is given without simulation or equivocation.

SECT. V. Or mental Reservation? (1)

The third Case allied unto this is of mental Reservation, which the Jesuits defend with the same reasons, and define with the same qualification, they do verbal equivocation: For as in that by wresting the words pronounced unto another sense, so in this by some addition not pronounced, but conceived in mind, the party swearing eludeth the Intergatory. So they say a Priest, if he be examined by an Heretical Magistrate, whether he be a Priest, may answer that he is no Priest; meaning of Bacchus or Apollo And an adulterous wife if she be questioned of adultery by her jealous husband, may swear unto him that she committed not adultery, meaning not to the end to tell him. The like they hold in promissory oaths, that a Traveler to save his life may swear to give money unto a Thief, though he never intend it; provided that when he sware, I will give thee so much, he understood if I owe it thee, or if thou demand it before the Magistrate. But as this mental reservation is built upon the same sand with verbal equivocation, so is it destroyed with the same dash; for it rooteth all faith and assurance out of men, makes God an Imposter, is deceitful unto our neighbor, perverteth the use and end of oaths, setteth open a great gate to all kind of lies and perjuries, and is so much worse than equivocation, as more difficult to be prevented. For equivocation foreseen or suspected may be prevented,

by such diligent explication of the words, as may leave no loop-hole of ambiguity. But no human art or providence, if men will be juggling, can prevent this pouch of this Reservation. Where will you find a knot to tie this Vertumnus unto one shape?

Bind wicked Proteus in chain, A thousand fold, 'tis all in vain.

Jesuits and Priests reserving unto themselves the liberty to reserve anything, are not afraid with a serious brow, to take our oath of Allegiance, though penned with such accurateness of words, as leaveth no hold for cavil, nor way for escape; yet that very clause where in express words they promise that they will faithfully observe all the premises according unto the tenor of the words pronounced by them, and according to the plain and natural sense, and true intent of those words, without any equivocation or mental reservation, they understand at the same time with this reservation; to wit, that I will tell you.

SECT. VI. Or mental Reservation? (2)

They lie nevertheless at a ward to put by perjury; for say they, of the verbal and mental sentence one entire sentence is compounded, in which taken altogether there is no falsehood. For example, if a Priest swear in express words that he is no Priest, with the addition reserved in his mind, but not uttered, that I should tell it you; this whole sentence say they put together is true, viz. I am not a Priest that I should tell it you. Nor doth any reason seem to forbid a man the liberty, if he please, to compose his speech of verbal and mental terms. For why in our prayers, if one should pronounce those words only our daily bread, and express those other give us this day in his thought only, should the speech be entire and lawful, and acceptable

unto God; and unlawful to do the like in an oath? That this Jesuitical Legerdemain may fully be discovered; First, it is admirable that these most acute Artificers should not perceive the Fabric of this defense not to be raised, but upon the utter ruins of faith in all human judgments, contracts, and promises. For the argument they use, if it were of any weight, would as well justify the practice of this equivocation before a lawful Judge, and in a just matter, (which they say ought not to be) as before an incompetent Judge, and in an unjust matter; seeing that a sentence composed of the verbal and mental parts, is in each of the same truth or falsehood. And this answer may suffice ad hominem: but ad rem, I say secondly, that a sentence composed, as hath been said, of the verbal and mental parts, may be admitted when a man converseth with his own thoughts, as in private meditation, or when he addresseth himself to God alone, as in prayer or thanksgiving. But when he hath to do with men, as in oaths, where he is to bear such testimony as may be heard, and understood by others, a sense mixed of verbal and mental parts, is in no wise to be admitted. The reason of this difference is manifest, because that which he beareth hidden in his breast, is no further known unto others then he declareth it by word of mouth. But to God before whom nothing is hidden, the darkest secrets of the heart are transparent. So that when men pray or meditate, it is all one, as to the point of truth or falsehood, whether they pronounce their whole thoughts, or part of them, or none at all. But men who cannot dive into the heart further then words and actions discover it, must weigh the truth or falsehood of a speech by those things only which may yield testimony unto the hearers. Which since those reservations which are kept within cannot effect, the truth of a speech is to be judged only by the words pronounced, and not by mental Reservation:

SECT. VII. That an oath is not to be eluded by a studied subterfuge.

The fourth Case followeth the fact; for as before, and in the act of swearing, there ought to be a purpose of fulfilling the promise in the same sense wherein it was proposed, without any equivocation or mental reservation: so ought there afterwards to be a desire and endeavor in due time faithfully to perform the same, according unto that sense wherein it was sworn, without any evasion or subterfuge; and as it is one kind of perjury to strain the words during the act of swearing, unto another sense, then that wherein they are understood by the Auditors, so is it another kind of perjury having sworn honestly, not to proceed sincerely, but decline, and elude the strength of the oath, (though the words be preserved) with some new forged invention, variously turning and dressing the words to cloke the guilt of their Consciences, as Tacitus saith of some. Stobaeus telleth a pretty tale from Herodotus of one Archetimus, who had deposited money in the hand of his friend Cydias; Archetimus upon a time desirous to have the same restored, Cydias loath to part with the gold, disclaimeth that he ever received it. The matter brought before the Judges, the Plaintiff accuseth, the Defendant denieth, each with like confidence, neither by any witness. The Judges other proofs being wanting decreed the determination of the controversy by Oath; the day is appointed, Cydias in the meantime putteth the gold into an hollow staff which he had cunningly bored, and withal counterfeiteth sickness; then appearing at the time with his staff as newly recovered, delivereth the same unto Archetimus to hold, whilst he approached the Altar, and till he had performed the solemnity of his oath; This done with a most composed mind and countenance he sweareth that he had received gold from Archetimus, but had restored it again unto him. At which Architemus nettled with his loss, and transported with indignation to see perfidiousness joined with so much impudence, threw the staff so hard against the

pavement, that it brake, and discovered the money, the fraud of Cydias, and the whole truth of the matter: Which act the writer of the story calls an embroidered lie; and observeth, that Cydias in reward of his perfidy came to a miserable end. Many such examples are extant both in Historians and common practice, out of which I shall collect some profitable observations. The first is, that even dishonest men are so far touched with some Conscience, and obligation of an oath; that though none at all or very small regard be had to justice and honesty; yet through an instinct of nature, they think themselves bound to quit themselves of their faith engaged, by performance of the same. The second, that unless corrupt affections be vigorously withstood, that spark which is left in us of natural light will go near to be altogether extinguished by them, or so raked up in that heap, that we shall rather give our minds artificially to palliate, then sincerely to avoid perjury. Thirdly, that he who desireth to keep himself free from all spot of perjury, must diligently ponder every word in its own strength, and sense of the oath which he is to take, that if it ought not to be kept, it may not be taken, or if it be fit to be taken, it may be fulfilled without deceit or simulation; for unadvisedly to chop up holy things is impious, and too late when they are once swallowed, to chew them. And so much for the first doubt, which amounteth unto this sum, That the words of an oath where they are so clear in themselves, that amongst honest men there can be no question of their meaning, the party swearing is obliged in that sense which they apparently afford, and may not either in swearing, or when he hath sworn, stretch those words upon the Last of his interest, by any studied Interpretation.

SECT. VIII. In what sense voluntary oaths are to be understood.

The second doubt is, where the sense of the words is in question, and the Cases are three. The first of spontaneous oaths, as in promises proceeding from the mere motion of good will, and a kind of liberty of the mind, rather than duty of right or respect. The common and true answer is, that these promises are to be taken according to the intention of the party swearing, because every man is the best interpreter of himself. For example, if any of us should bind ourselves by a vow, or promise, to give unto the poor of a Village, or Collector for them ten shillings a month; if the poor, seeing month as we use it is an ambiguous word, should by the promise pretend unto the first pension upon the 28th day of January, and so for the rest of the months upon the same day, taking a month for the space of four weeks, which is one signification of the word; and he on the other side should say that it was not due till the last of January, and so forth, taking month for the twelfth part of a year, according to the distribution of the year in the Calendar, which is another signification of the word, it were most just that the ambiguity should be interpreted, rather in his sense than theirs; because that Pension was not due in justice, and before the promise, but in charity, and by virtue of the free promise, without agreement or contract. And of this kind of oath ought these words to be understood which are cited in the gloss upon the Canon Law, It is manifest that God taketh not the oath as he unto whom it is sworn, but as he who sweareth understandeth the same. But that this may rightly be apprehended, two things are observable: One, that it holdeth especially in spontaneous oaths and promises, for in such as are required the reason differeth, as shall be said anon: The other, that the party swearing is in the present case obliged to hold unto his promise in that sense which he either really intended when he sware, or was willing the Auditors should believe. And not in any which he shall please afterwards to impose. For God who beholdeth the heart, is not

deluded by words. Nor ought the intention to serve the words, but the words the intention.

SECT. IX. And in what, oaths that are required (1.)

The second case is of oaths and promises, which are offered unto, or required of the party swearing, whether of right, or under pretense of right; such especially as Rulers of authority command their Subjects, or Laws ordain, as with us those of Supremacy and Allegiance, those which the Statutes of the University require of Graduates, and the like; Also those which either party in lawful Covenants demandeth of the other or are used in Bargains, Leagues and other mutual Contracts, for the confirmation of mutual faith. For answer in this case I say, that this kind of oath ought regularly to be understood in that sense which the party unto whom the oath is made seemeth probably to intend; so that the party swearing is bound under pain of perjury to fulfill his promise, (if it be lawful and honest) according to the intention of the deferent. The words are understood according to the mind, and intention of him to whom the oath is made, saith the Lawyer. The reason is, because this kind of oath is taken to the end he to whom it is sworn, may by interposition of the same be assured, that the promise of the party swearing shall be performed unto him; but he would be no whit the more assured of that performance, if the words were to be interpreted at the will of the party swearing, and not according to his own sense; for there is a different nature of obligation, where debt is claimed by promise, and where promise is claimed by debt. God himself who is by Law no man's debtor, maketh himself through his free promises our debtor; and he who obligeth himself by a voluntary vow, oath, or promise unto any deed of Charity, ipso facto contracteth debt. But because this debt is not

founded upon his right unto whom the promise is made, but floweth merely from the free act of the party promising, it is most just that he should be his own Interpreter, who is most concerned to know how much, how far, and in what sense he intended to oblige himself. On the other side where the promise is founded upon some antecedent right, either that of subjection, and duty, by Superior Authority, or of Justice, and contract by agreement, between parties; Because he to whom the promise is made hath right to inquire the same, and is most concerned that it be faithfully performed, reason requireth that the obligation of the promise should rather be judged according to his mind, and interpretation, then by the sense of the party promising.

SECT. X. And in what, oaths that are required (2.)

The third case is, where the Deferent offering an oath of ambiguous sense, desireth only that the words be sworn, leaving it unto the judgment of the party swearing, to take them in what sense he pleaseth. I say it may very well be suspected that some deceit is couched in them, and that a pious prudent man ought therefore to refuse an oath proffered upon such conditions: which I shall make good by a threefold proof. First, in regard of the oath itself, in which the first thing required is truth; for a speech of indefinite, and ambiguous sense, before it be distinguished, is no true proposition, indeed no proposition, seeing a proposition as by the definition thereof is known even to children, ought to signify a truth or falsehood without ambiguity. Secondly, in regard of him to whom it is sworn. For the proper end of an oath is, that he to whom it is made may have some assurance of that which before was uncertain. But what certainty can be had in words of an uncertain sense? Thirdly, in

regard of the party swearing, who if he take the oath upon that condition, prepareth either scandal for his neighbor, or a snare for himself; for this kind of deception cannot be imagined to have other drift, then either that others might be drawn by our example, (though against their Conscience) to take the same oath, which is to give scandal unto our neighbor; or that something else by virtue of that oath might afterwards be required of us, which is either unlawful, or inconvenient, and that were to set a snare for ourselves. Wherefore let a prudent man beware how he suffer himself thus to be imposed upon, or esteem the fear or favor of any at that rate, to swallow the bait, wherein he knoweth certainly, there is a hook. Assuredly that the act of swearing may be duly performed, it is expedient the sense of the words be most clearly agreed upon, by all the interested parties, which the Ancients call *Liquido jurare*.

Scis tamen and liquido juratus dicere posses.

And it appeareth by an old form, the deferent when he offered an oath to the party about to swear was wont to say, *Qua de repeto liquido jures.*

SECT. XI. How far the sense of an oath dependeth upon the scope of the same.

But enough of these, I come to the third doubt, which is of the sense of an oath according to the latitude or extent of the same, That is, whether the sense of the words be, and how far it is to be measured by the scope. The first case is, where the cause of an oath was particular, yet the words are general. For example, Papal usurpation was the cause of the oath of Royal Supremacy, he arrogating unto himself the exercise of Supreme Jurisdiction in *spiritualibus*,

throughout this Kingdom. I answer, such an oath is obligatory, according to the express words in the utmost latitude: The reason is, that the intention of a Law, though made upon particular occasion, is general, to provide against all future inconveniencies of the like kind, or nature. And therefore albeit in the preamble of a Law, particular mention be often made of that grievance, which gave occasion to enact the same, yet those words wherein the Law is contained, are for the most part general; which is done industriously, and on purpose by Lawgivers, that other things of like nature may fall within their comprehension. Wherefore as Lawyers take their Responsal upon the sense of the Law, not from the preamble, but body of the Statute; so of the right interpretation of an oath, ought judgment to be made, not from the preface, but from the body of an oath.

SECT. XII. An oath upon condition.

The second Case is, how far an oath is to be understood with some conditions. I answer briefly, First, if the words contain an express Condition the party swearing is not bound, till the condition be performed. As if Gaius promise Titius an hundred Crowns tomorrow, if Titius give him this day possession of such or such land; the possession not given, Gaius is not bound by his promise. Secondly, if there be no express Condition, yet all those conditions and exceptions which are presumed by Law and common custom are to be understood, as I will do this or that, If God permit, If it be not against the right of another, If things remain as now they stand, If I be able, If be it lawful, &c. as was said more at large in the explanation of the second Hypothesis.

SECT. XIII. Of the first and second Intentions of an oath.

The third Case is of the first and second Intention. For the seemeth to have fulfilled his oath, who doth according to that which he intended in the second intention, which is the end; although he perform it not according to the sound of the words, which contain the first intention only, or means. For example, if a man engage himself by vow, oath, or promise, to allow ten shillings a month to the poor of such a Parish, and in January and February give nothing, but in March send them thirty shillings. I answer, that if the party swearing intended to oblige himself unto the substance of the thing only, and not unto the circumstances and manner of it, he is not obliged unto that way which the words seem to insinuate. Whence in the example propounded, if he had paid a whole three months pension in the first month, doubtless he had performed his promise; yet it may be that by accident, and consequence he might become obliged, even unto the manner of the thing, because every man is obliged, *caeteris paribus*, and if there be no other impediment, in doubtful matters to choose that which is safest: As in the example proposed, it were safer to pay the pension in the manner promised, that is, rather every month ten, then in the third thirty, both in respect of the danger of sudden death, and uncertain events, and to avoid those scruples which may arise even from neglected circumstances. I should therefore advise a pious man, that he be careful to fulfill every of his vows, oaths, promises, according unto the tenor of the words, and of his intention, as far as conveniently he may, even to the slightest circumstance; lest through contempt of small matters, he create scruples unto himself, or by degrees get such a habit, as may cause him to contemn greater. But however unto one thing I exhort all, and it is the sum and top-stone of this whole discourse, concerning the sense and interpretation of oaths, that above all they be watchful, lest they be too indulgent unto themselves

in this business, or whilst they pamper their own desires, weaken the bond of an oath with over mild, and loose interpretations, and so expose themselves unto the danger of perjury. And thus much shall suffice to be spoken of the Formal cause.

SECT. XIV. When a lawful thing is sworn for an evil end.

There remaineth a little to be said of the Final Cause; The first doubt is, when a thing lawful in itself is promised with an ill intention, or to an ill end. First I say it is simply unlawful to promise anything, though lawful, with an evil intention, or to an evil end: The reason is, because as one defect in any human action is enough to render the whole action evil, (for good is the effect of an entire cause, evil of a partial) so especially a defect derogating from the end, which holdeth the principal place in moral things; at which that speech of our Savior is thought to aim, But if thine Eye be evil, thy whole body shall be full of darkness. Secondly I say, if any man shall have sworn anything unto another for a dishonest end, yet without any dishonest conditions to be performed by the party, he is obliged to fulfill the promise. If a man promise a woman a Jewel, intending with himself to engage her by that token unto immodest love, nevertheless without show of any unchaste condition, he is bound by the promise. The reason of each is, because it is lawful to give a Jewel, but to give it upon lewd conditions, unlawful. Thirdly I say, that which is promised upon dishonest unlawful conditions, the conditions performed ought to be fulfilled, at least if the thing be lawful. If a man promise a sum of money unto another, for adultery, false witness, or any other wicked exploit, he is bound when the other hath performed the conditions, to stand to his promise and pay the money. So Judah rightly understood himself obliged to send the Kid

unto Tamar his daughter in law, as the promised price of her Whoredom. The reason is, that although the bargain were, yet the thing promised in that bargain is not unlawful. Wherefore it ought not to have been done, but being done it is valid. And by what hath been said it is sufficiently clear, that an unlawful oath of a lawful thing may be obligatory.

SECT. XV. Whether the party swearing not intending to swear be obliged?

The second doubt reflecteth upon the Intention of the party swearing. That Intention I mean, not which aimeth objectively at the matter of the oath, or thing promised, whereby we inquire what the party swearing intended by this promise, in what sense, and how he obliged himself: For of such intention we have already spoken, when we discoursed upon the sense and interpretation of an oath: but that intention is here understood, which aimeth objectively at the act of swearing; whereby we inquire whether he intended to swear, or to oblige himself, or not. Upon which Scholastique dispute, very much, but more subtly then profitably, I shall contract as much of them as is useful into a narrow room. The first Case is, when a man through evil custom heedlessly aboundeth with unnecessary oaths; I say first, that this kind of swearing is most certainly a very grievous sin; not only Originally and in respect of the Cause; because it floweth from a depraved habit; but also formally, and in respect of the Act, for as much as an act in itself sacred, is rashly exercised, not in Judgment, and without reverence. Secondly I say, that such oaths, if the act of swearing through the impetuosity of the mind were altogether inconsiderate, are not obligatory. But if any deliberation of mind were present, though small, they are in part obligatory. The reason of

either member of this assertion is, because deliberation of mind is required to make any human act binding, and the measure of the obligation ariseth from the measure of the deliberation.

SECT. XVI. An Oath by the way of Complement.

The second Case is, when in Honor, or Complement (for so Casuists speak) a man giddily sweareth in a matter of small moment. For example, if one contending with another, and pressing him by way of respect unto precedence should swear (as it often happeneth) not to stir out of the door, sit at the Table, or touch the cup, till the other were first out, or set, or had begun. Nay since commonly the persons so striving both swear the same thing, if such oaths were obligatory, one of them must needs be foresworn, because of necessity one must do that, which each sware he would not do. First I say as before, that an oath of this kind is rash, and not without sin, because without judgment. Secondly, that it is nevertheless in itself obligatory, except the act were altogether void of deliberation. But thirdly, that such obligation may either be stopped or taken away in such manner, as who doth otherwise then he hath sworn, may avoid Perjury. That is to say, the obligation may be stopped, if it be understood with a tacit condition, or exception; in this sense, If it please you, or if the thing be left unto me, I will not stir till you go first. It may also be taken away, because seeing it proceeded from consideration of the place due unto the other, that other receding from his right, the obligation ceaseth, as (God willing) when I come to the solution of the bond shall more plainly appear.

SECT. XVII. When a man is doubtful whether he have sworn or no.

The third Case is, whether a man doubtful whether he have sworn, or no, be bound by his oath? Some think he is not bound: from the rule of the Law; In doubtful cases possession is the better title. But seeing this rule is of force in things appertaining only unto commutative Justice; as if the Heir of Gaius should doubt whether the goods of the deceased bequeathed unto him by will were lawfully gotten; some, and more truly perhaps, think he is bound, unless he can clear his doubt. The reason is, because of doubtful things the safer is to be chosen: and certainly it is more safe to think himself obliged, then not obliged; because by that error he exposeth himself at the most, but to temporal inconvenience, by this unto the danger of perjury.

SECT. XVIII. A man willing to swear, but intending not to oblige himself.

The fourth case, whether man willing to swear, yet intending not to oblige himself, be nevertheless obliged? Most of the Scholastics and Casuists, they especially who were before Cajetan, deny him to be obliged; and Ovid's Cydippe defendeth herself from perjury at this word,

It is the mind with which we swear, And I had no such meaning there.

But the opinion of Cajetan, and his followers is sounder, who hold the party deliberately swearing to be bound, whether he intend to oblige himself or not. For the act of swearing is both in itself obligatory, and proceeded from a deliberate mind. Therefore obligation, unless it be otherwise impeded, must necessarily follow. Wherefore seeing that obligation floweth necessarily and naturally from an oath, it is not in the power of man to hinder or remove it; for

the nature of things stated, no man can hinder their necessary effects. Were it not ridiculous, if he who hath signed, and sealed a bond, shall plead that he had no intention thereby to oblige himself? Nay, would he not be obliged notwithstanding that plea? He therefore who taketh an oath, is as much obliged by the act of swearing, whatsoever he intended, or profess he intended. For he who intended the cause, is presumed also to intend the necessary effect of that cause.

And thus, the goodness of God directing, and your patience accompanying me, at length I have finished this difficult and scattering dispute concerning the Bond of an Oath: the other part of this Treatise, which concerneth the Solution of the Bond, I shall shortly (by God's help) deliver in one Lecture.

The Seventh Lecture.

Of the Solution of the Bond of an Oath; and of the use and abuse of Oaths; containing five Cases, and so many Conclusions.

SECT. I. What truth is required in a promissory oath.

The solution of the bond or tie wherewith he who sweareth bindeth his soul, and whereof we have hitherto so largely discoursed, is the task of this day, and conclusion of the work proposed. Of which solution before we descend unto the particular kinds, two things are to be observed in general. First, that solution of the bond is proper unto a Promissory oath, and hath nothing to do at all with the

Assertory. In every oath whether assertory, or promissory, there ought to be truth; but with this difference, in the assertory, a single truth, and for the present sufficeth, where in the promissory a double truth is required, one respecting the present, the other the future. The present truth regardeth the act of swearing, and consisteth in this, that the party swearing say true when he sweareth; that is, that his mind agree with his words, and that he be resolved to hold unto that which he promiseth. Which act of swearing in the promissory wholly agreeth as to the truth and falsehood with the act of swearing in the assertory. For the matter of that truth in either act, seeing it regardeth the time present, passeth as it were into a kind of immutable necessity, in as much as an oath, so soon as it is made, may instantly be said to have been true or false; which truth or falsehood, when the act hath once passed, is as impossible to be altered, as it were to make a fact to have been no fact. That obligation therefore whereby the party swearing is bound for the present to say truth, falleth upon the act itself of swearing; and is inseparably conjoined with that act, and for that reason cannot be loosed, nor separated from the oath: and of an assertory oath, except this for the present, there is no further obligation, because the matter thereof is some fact past or present. But in a promissory oath, the matter whereof is a thing to be performed for the future, another truth is also required for the future, which regardeth the matter of the oath; and consisteth in this, that the party swearing make that which he hath promised to be true; that is, that he fulfill his promise. Now seeing the matter of a promissory oath, to wit, things to be performed for the future, are through the uncertainty of future events, obnoxious to manyfold changes and alterations: hence it cometh to pass, that the obligation which falleth upon that matter, and whereby the party swearing is bound in future to fulfill his promise, is mutable, and separable from the oath. And this is that, which we call Solution of the Bond. From whence also followeth that

which is to be observed in the second place; to wit, that the solution of the Bond in a promissory oath, ought not to be understood in relation unto the former obligation, which ariseth from truth for the present, and is common with this, and the assertory oath; but ought to be understood only in relation unto the later obligation, which ariseth from truth for the future; which is proper and peculiar unto this. That is to say, every person swearing promissorily, ipso facto, and by virtue of the act of swearing is simply, and indissolubly obliged in present, to intend faithfully and from his heart to effect that afterwards which he promiseth; but having sworn, it may come many ways to pass, that he may not be bound for the future, to fulfill that afterwards which he formerly promised and intended. In a word thus, He is always forsworn, who intendeth not that which he promiseth; but he is not always forsworn, who performeth not that which he promised.

SECT. II. What the solution of the Bond is.

Now that a thing promised may nevertheless lawfully, and without danger of perjury or other sin, not be performed, must necessarily happen one of these two ways, either that there was no obligation from the beginning, or that it was (by solution of the bond) since taken away. If the thing promised were, when it was sworn, either impossible, or unlawful, the oath taken unto the same imposeth no obligation, nor needeth solution, but penitence; for as much as in so swearing grievous sin is contracted, but no bond; for we have already shewn, that impossible things, and unlawful things are in no wise obligatory. Wherefore solution of the bond supposeth antecedent obligation, and implieth that the same may be afterwards so taken away, or at the least obstructed, that he who was formerly bound up

so close with the bond of his oath, that he might not under pain of perjury do otherwise then he had promised, is now no farther bound unto the performance of his promise. The business therefore now in hand is to find out a certain reason, whereupon he who hath obliged himself by the bond of an oath unto the performance of a thing, may rest secure in his Conscience that he is delivered from that bond; and no farther bound unto the performance of that promise. To which solution those five ways commonly assigned, we shall examine in their order.

SECT. III. Whether an oath may be dispensed withal?

The first Case is of the dispensability of an oath; Whether and in what the dispensation of a Superior, may take away the obligation thereof. Dispensation, as the word is commonly taken, signifieth exemption of a person from the ordinary course of Law granted, by special favor of him who is in authority. As if a man who is subject to any Law, should by especial grace of his Prince be exempted from obedience unto that Law, as we see daily practiced in Universities, where upon reasonable grounds dispensations are usually granted unto particular persons, whereby they are in some things freed from the observation of the Statutes. Now the right of dispensation is founded upon that equity, which requireth that sometimes the rigor of Law be in some things remitted, to the end that equity may not be excluded. For seeing Laws were of necessity made in general terms, and have regard unto that which is commonly and for the most part good and profitable for the public, which nevertheless pro hic and nunc, may happen to be unprofitable, or at the least less convenient; it therefore seemed good, where that which is established by Law appeareth to be exceeding burthensome, or inconvenient to some

private person, and the public to receive no great detriment by the omission thereof, that the Prince, or other legitimate Superior, should have power to determine, that the Law in such cases is not to be observed. And this is that which in Law we call Dispensation. Now what power is in secular Princes to dispense with their Laws, the same do the Popes of Rome arrogate to themselves in dispensing with Vows and Oaths. Whose impudence in this kind, whilst they absolve subjects of their Allegiance to Kings, null Leagues and Contracts made by Princes, untie the straightest knots of vows and oaths by commutation, relaxation, dispensation, contrary command, or other artifices at their pleasure, and for their profit, I could wish some who most justly condemn, did not most wickedly imitate. But though others de facto exercise this power of dispensing with oaths, yet the Pope only challengeth it unto himself de jure. Many even before Luther have grievously complained of this thing, and sharply inveighed against the abuse of Papal Dispensations; unto whose writings I refer the studious, and betake myself by some arguments to prove the bond of an oath simply indispensable, so that no power at all of dispensing with it, is either in Pope or any other. First, because the obligation of an oath is of Divine natural Law. But Natural Law is not subject to Human Power, seeing God alone is the Author and Lord of Nature: nor could it ever yet be shewn, that God hath granted unto any kind or order of men, authority to dispense with the Law of Nature. Secondly, because this power of dispensation being granted, the chief end of an oath, which is security (as I may call it) for the thing promised, would utterly be overthrown: for he unto whom the oath is made can have no assurance, if the promise of the party swearing may be dispensed with, that it should ever be fulfilled. Thirdly, because an oath in that very act and instant, whereby it imposeth the obligation of swearing, and the promise of performance, acquireth right of the thing promised unto the party to whom the oath is made; which two effects of an oath are so

combined, that the one granted or denied, the other also at the same time must necessarily be granted or denied. Wherefore suppose the obligation of the party swearing taken away by dispensation, and it followeth that the right of him to whom the oath was made, is also taken away by the same; and farther, that such Dispensation must be either needless, or unreasonable: needless and superfluous, if it be done with his consent, to whom the oath was made; if against it, unreasonable and unjust. For he being willing, the obligation (as I shall show) may be remitted, even without dispensation; but to take away his right against his will, is injury. Fourthly, because in a promissory oath, obligation is not only made unto our neighbor, as it is promissory, but to God also as it is an oath. Wherefore granting, which is not to be granted, that Superiors have power to take away the obligation, whereby in regard of promise man is obliged to man; yet would it be unsupportable presumption, that dust and ashes should arrogate unto itself authority to take away the obligation, whereby man is obliged unto God as witness and revenger. Fifthly, because human dispensation is a matter of external Judicature. But the obligation of an oath, is in the conscience within, which is subject unto no Judge but God; and belongeth not unto the Empire of man. Wherefore he who claimeth the right of dispensing with oaths, be he what he will, assumeth unto himself divine Power, seateth himself upon the bench of internal Judicature, and exerciseth Dominion over the Conscience. And such dispensation is de jure null, and invalid; even as that sentence is invalid unto all intents and purposes of the Law, which is given by a Judge in a Court where he hath nothing to do, because there he is no Judge.

SECT. IV. The Popes power of dispensing with oaths examined.

Here the Patrons of Dispensation are wonderfully perplexed, how to ward the blow of the first argument, which is all they use to object unto themselves. It costs them much sweat to roll this stone, (for they see it is the part of the Popes Authority, which lest his Kitching languish, must in any case be maintained) and they may put the gain in their eye; seeing they cannot find wherewithal to make a solid defense, nor could ever yet agree amongst themselves, by what right the Pope arrogateth unto himself this power of dispensation. Which one thing were enough to argue them conscious of their weak pretenses. For as in waging war, so in exercising power, the cause which is not steadily asserted, may well be presumed unjust. Some deduce this power of dispensing with vows, and oaths, from the absolute and Ecumenical Authority, whereby the Pope is Lord of the Earth, and Emperor of the whole World. For seeing every person vowing or swearing is the Popes subject, this condition say they is understood in every vow or oath, to wit, If it please our Lord the Pope. Whereupon it followeth, that when the Pope signifieth, which he doth by way of dispensation, that he is not pleased the thing sworn should be ratified, the obligation presently ceaseth. Which opinion granted, the Pope at his pleasure may rescind any oath, either with just cause or without it. Wherefore this rejected as too gross, others, and among them some modern Jesuits deny, that the Pope can dispense with oaths, or dissolve Royal Contracts, or that he ever did it properly; that is, by taking away the obligation, or the obligation remaining by exempting any private person from the same: But they say that he dispenseth only improperly; that is, by declaring the oath in that case not obligatory, by reason of the hindrance of some good, or consequence of some ill, if the oath should be kept. But on the contrary, besides the evidence of his practice, which showeth that the Pope exerciseth in this matter more than declaratory power, or (which cometh to as much) under pretense of declaratory power, can determine of Leagues, Vows,

Oaths, Contracts between Kings, or any other at his discretion, being in this case Supreme and sole Judge, whose sentence must be obeyed, without appeal. It is worthy consideration, First, that either the Cause is manifestly just, why a thing promised by oath ought not to be performed, as if it be impossible, dishonest, or any way unlawful; and then the party swearing may of his own authority, nay ought without waiting for dispensation from the Pope or any other, to retract the thing sworn: for where there is no obligation, the Conscience is free, and needeth no dispensation. Or secondly, that no just cause appeareth why the oath should not be kept: and then it must be kept; and he who either asketh, or granteth Dispensation, sinneth; Because the obligation which neither can nor may be removed by human power, remaineth. Or lastly, that the thing is doubtful, and appeareth not by reason of difficulties on both sides, whether the party swearing be bound to the performance of his promise: and then it will be profitable to consult with pious, and prudent men, skillful in divine Law, and to resolve with their advice what is most expedient. In which matter seeing knowledge is more requisite than power, I understand not why the Pope should be fitter than another man, unless it were certain the Pope excelled other men in prudence, and piety; for that which is not credible, certainly is not necessary. Thirdly, others not satisfied with this declaratory Dispensation, as detracting too much from the Popes authority, have beaten out an answer of wonderful subtlety, that the obligation of an oath, which is of divine Natural Law, may really be taken away by Dispensation of the Superior: but that it must not therefore be said, that the Superior dispenseth with Divine and Natural Law; because say they, that Divine Law of Nature is, that an oath so long as the strength and obligation thereof remaineth, should be kept; and with this Law the Superior dispenseth not, but by his Dispensation taketh away that strength of the oath, whereby it obliged the party swearing before the Dispensation. But this subtlety opened unto the quick

would be found a mere trifle which availeth nothing, or implies a contradiction; and is refuted by the Jesuit Achorius, though Sayrus the Monk be about his ears for it. So whilst these Cadmean brethren dispatch each other by mutual blows, nor can find any reason whereby to arm themselves in proof; they really confess that the cause which they have undertaken, cannot be defended. Wherefore I conclude that neither Pope, nor Prince, nor Synod, nor Senate, nor Ecclesiastical nor Secular Superior, hath any right to dispense with Leagues, Contracts, Oaths, or to absolve any man from that Bond wherein before the Dispensation granted he was engaged.

SECT. V. Whether an oath may be commuted.

With this first of Dispensation, the next question, or the second Case of Commutation of an Oath is allied. Now Commutation (as the word expresseth) is nothing else but translation of the obligation from one matter to another, which whether greater, less, or equivalent, seemeth in some respect to be more convenient. And Commutation differeth from Dispensation, as a species from the genus, or part from the whole. For if a Bond could be loosed either by the one or other, it would be wholly unbound by Dispensation, by Commutation in part only. The doctrine of Casuists concerning Commutation, amounteth to this sum: First, that a private man of his own authority, without his Superiors Dispensation, may commute a vow, or oath, into that which is evidently better; which they confirm by God's example, who doth not always fulfill his temporal promises to the letter, but often changeth them for the better; and for confirmation of this opinion, they bring the speech of Gregory, He infringeth not his promise or purpose, who changeth it for the better. Secondly, that promise cannot be commuted to that which is

evidently worse, or whereof question may be made, whether it be better, without authority of a Superior qualified with legitimate power of judging and determining in that point. Thirdly, that by Commutation preexistent obligation is wholly taken off from the former matter, and new obligation brought in and laid upon a different matter. But this whole doctrine is built upon a false foundation, to wit, dispensability of an oath; which being (as we have proved) null, this superstructure of Commutation must necessarily fall to ruin. Wherefore briefly I say, that the bond of an oath cannot be remitted or loosed, either in whole by Dispensation, or in part by Commutation, without consent of all the parties; But the consent of him unto whom the oath is made, is more especially required, because such right is acquired unto him, as without his own consent ought not to be taken away. For the example of God it suiteth not, because his promises as they are all of free bounty, so the temporal ones are also conditional, and to be understood with exception of the Cross, of the good pleasure of God, and of that which he knoweth to be most profitable for us. Neither is the case of a Vow, and of an Oath altogether alike in respect of Commutation; for in a vow seeing it is made to God alone, some liberty may perhaps be granted unto the person vowing of changing the same into another which may be evidently better, and more acceptable unto God, there being nothing in this alteration injurious unto a third person: but in an oath which is made unto man, injury might be done him, if it should without his consent, and against his will be commuted into any other thing. As if Gaius sworn to pay ten pound unto Titius, should give him an Horse worth ten pounds, it would not satisfy his oath, for it is not reasonable that a man should be forced to commute a thing due unto him. Wherefore the bond of an oath cannot be loosed, nor the obligation taken away by either of these inventions.

SECT. VI. The Superior may invalidate the oath of his Subject.

But it seemeth it may by the three ways remaining; to wit, Irritation of the Superior, Cessation of the matter, and Relaxation of the party. Wherefore the third Case is, of solution of the bond by irritation declared by the Superior. Now Irritation, (for so with the Casuists, we must speak, though barbarously) signifieth an act of the legitimate superior, whereby of his Authority he rendereth an oath made by his Subject without his consent null and void. For that legitimate Superiors may rescind Vows, and Oaths, of such as are not free, but under their Authority, Moses teacheth (as when we were upon the efficient cause we observed) largely throughout this chapter. The reason is, that he who is in the power of another, is not in his own, nor can oblige himself in things wherein he is subject, without leave from his Superior; and therefore he ought not by any act of his to bring obligation upon himself without the others consent, either expressed, or upon reasonable grounds presumed. For the rights of Rulers over their Subjects are by the immovable and eternal Law of God perpetual. Moreover the duty of Subjects together with the right of obedience and subjection, are by the same perpetual Law, perpetually and indispensably obligatory. Which antecedent obligation (by our third Hypothesis) obstructeth the effect of a subsequent oath, in such manner as it cannot be binding: for the former obligation ever prejudgeth the latter, and rendereth every act introductive of new, and contrary obligation, invalid. Wherefore in this case I say first, that a Subject ought not by oath to promise any of those things wherein he is subject unto another, without the consent of his Superior at the least presumed. Secondly, that if he have sworn, and the thing be lawful, he is so long obliged unto performance, as it appeareth not to be against the will, dignity and profit of his Superior. Thirdly, that the Superior if he have by express consent, whether before or after, once ratified the promise of his

subject, cannot make the same afterwards void, or null the obligation thereof. Fourthly, if the Superior so soon as he cometh to know of the matter, openly and peremptorily, declaring his dissent, forbid the performance of the same, that the transitory obligation presently ceaseth, and the subject by virtue of his former obligation of duty, which is permanent, and perpetual, is bound notwithstanding his oath to obey his Superior. Whence if any man subject unto the power of another, whether Master, Father, or Prince, voluntarily compelled by force or fear, or misled through fraud, or example of others, happen to make any oath, whereunto he believeth his Master, Father, or Prince, had he been present, would not have condescended; the same hath sinned against his duty in swearing, and is bound in no wise to fulfill that oath. Resolved therefore upon this question, that irritation of a legitimate Superior may cancel the Bond of an Oath.

SECT. VII. The matter of an oath ceasing, the obligation ceaseth.

The fourth Case is of the solution of the Bond, by cessation of the matter, or some considerable alteration happening unto the principal cause of an oath: And it is then to be supposed that the matter ceaseth, when between the time of the oath sworn, and that wherein it is to be performed, the state of things is so changed, that if the party could have foreseen what would have followed, he would by no means have sworn. I answer briefly, that the matter of the Vow, Oath, or Promise ceasing, the obligation thereof must also cease: as in natural and artificial things, where matter is defective, the action of the agent must be likewise of necessity deficient. For neither can fire burn except it have combustible matter, nor a Carpenter make a form without wood. Wherefore if a Soldier swear obedience unto his General, the War ended, and the General reformed, he is not bound

by his oath to yield him obedience. And if a Father swear never to alter the Will whereby he made his son his Heir, yet finding his Heir afterwards practicing upon his life by poison, the Father is no farther bound by his oath, but notwithstanding the same may alter his will, and adopt another Heir. The same may be said where a man having heard the Statutes of any College or Society read unto him, sweareth to observe them; if these Statutes happen afterward to be revoked or abrogated, the party swearing is absolved from the bond of his oath. The reason is, that the root of obligation being pulled up, the branch must needs wither. Now the matter which gave occasion unto the oath, was the root of that obligation which sprang from the oath. For an Oath followeth the nature and condition of the Act wherewith it is joined, that is the matter which it containeth; as an accessory followeth the nature of its principal: and Accessories, say the Lawyers, are extinct, if you destroy the Principals.

SECT. VIII. An oath may be released by him unto whom it is made.

The last Case is of Solution of the Bond by Relaxation of a party; to wit, of him to whom the oath was made: as if Gaius should promise anything to Titius, whether Titius remitting the obligation, Gaius be absolved of his promise? Where the first thing to be observed is, that this kind of speech To remit an Oath, and the other which resembleth it, To favor a man of his oath, are not always taken by good Authors in the same sense. For sometimes they are used in relation to an oath to be made, and so he is said to remit an oath unto another, or to favor him of his oath, who the other being prepared to swear, contented with his good will, waveth his oath, and crediteth him without it; or for any other reason requireth not an oath from a person of whom he hath right to require it. But for the

most part they are taken with relation unto an oath made, and so he is said to remit or favor a person of his oath, who pardoneth the performance of that which the person had promised, nor though he have right to do it, requireth the thing due by virtue of that oath. So Suetonius saith, that Tiberius favored a Roman Knight of his oath, suffering him to put away his wife taken in Adultery with his son in law, though he had sworn never to repudiate her. And the Emperors Antoninus, and Verus, signified to one who had sworn never to be of the order, and yet was created Duumvir, that they favored him of his oath. And this is that remission or favoring of an oath which Casuists call Relaxation. Whereof I say first, that this Relaxation taketh place in Oaths, Leagues, Bargains, and other human Contracts, not so in Vows. The reason of this difference is, because vows are made unto God as a party, but man hath power to remit those only which are made to man. Secondly, I say, if an oath be sworn in favor of another, that is in order unto his honor, power, profit, or other convenience, that it is not binding, except he in whose favor it is made, accept, and ratify the same. As in our Law, a bond obligeth not Gaius to pay a hundred pounds unto Titius, though signed with the hand of Gaius, and sealed with his seal; except Gaius deliver it unto Titius, and Titius, or some other accept of it, in his name, and to his use. Thirdly I say, an oath so made, if the person unto whom it is sworn confirm the same, and expect the performance, cannot be relaxed by any third person. The reason is, because no man can take away right acquired unto another, without consent of the party. Whence it followeth, that the obligation (as we have formerly said) of an oath cannot be taken away by dispensation, except the party be willing. Fourthly I say, if he to whom the oath is sworn remit it, and would not have it be kept, that the party swearing is forthwith absolved, and no more obliged in conscience to perform the thing which he had promised. Wherefore Gaius being sworn to pay Titius an hundred pound, if Titius afterwards remit the debt, he is no farther bound by

his oath. The reason is, because any man may recede from his own right, and pardon a debt due unto himself, and the debt being absolved, it must needs follow, that the obligation cease, seeing solution of the debt is the period of obligation, as appeared by the definition of the same, and amongst us by the form of a bond, the conditions whereof performed, the bond becometh void, and of none effect. If you object that the debt is not absolved, because the promise is not performed. I answer, it is the same to all intents and purposes of the Law, whether it be really fulfilled or acknowledged by the party whom it concerneth as fulfilled. The reason is, because the acceptation of the person interested, is interpretatively payment: and so, the matter as it were ceasing, the obligation ceaseth, much after the manner whereof we have spoken in the foregoing Case. And this is that which Lawyers call Acceptilation, by which (though a Civil Solution, and not real) they affirm obligation to be no less taken away then by the real. If again you object, that although the obligation made to man might be taken away, by Relaxation, yet it seemeth the obligation to God should remain, as was answered in case of an oath extorted by fear. I answer that the bond relaxed, after the manner expressed, doth no injury unto God in the violation of an extorted oath, because a promise made in favor of another, is only directed unto God as witness of the promise made unto man, and revenger of the violation of that faith which is engaged unto the other; which faith seeing he violateth not, but fulfilleth his promise, he is wholly absolved from all obligation, both towards God and man. Fifthly I say, that solution of the Bond by Relaxation of the party, extendeth so far as pleaseth the party relaxing. As if Gaius have sworn to pay Titius an hundred pounds, and Titius have afterwards remitted fifty pounds, the obligation is not wholly absolved, but in part. That is, the bond as to the fifty pound remitted is void, but it remaineth good as to the fifty pound not remitted. Again, if Gaius have sworn to pay Titius an hundred pounds within 20 days, and

Titius perceiving that Gaius cannot without inconvenience unto himself pay the money at the time appointed, give him other twenty days: This Relaxation made by Dilation, or propagation of the time, remitteth so much of the obligation, that he is not bound to pay the money within the time limited, by his oath; yet he is bound, and that by virtue of his first oath, to make payment within forty days. Sixthly I say, that Relaxation by a party is of force, so far as that party is concerned, but is not of force to the prejudice of a third person. The reason is, because any man may by act remit, as much of his own right as he pleaseth, but no man can diminish the right of another, without his knowledge and against his will. Let men therefore so recede from their own, that the rights of others receive no detriment. Thus Abraham, Gen. 14, receded from his right, when after the victory won upon the four Kings, he bestowed his whole share of the spoil upon the King of Sodom, reserving unto the three Commanders, his fellows in arms, their due proportions. Whence Gaius sworn to pay a hundred pound unto Titius and Julius, if Titius pardon him his part of the debt, he is absolved as to that which was due unto Titius; but remaineth bound as to that which is due unto Julius. Upon the same ground Relaxation by consent of the parties availeth nothing in Contracts of Marriage; because therein man's profit is not regarded only, but the Ordinance of God also, to whom great injury would be done, if that contract though with mutual consent of the party should be violated. For the virtue, and efficacy, which this Relaxation, whereof we now speak, hath to null obligation, supposeth that act which introduced obligation, to have considered nothing else but the good, and profit only of the party relaxing. If any other party be by right of his own interested, that the obligation should not be remitted, the obligation is not remitted.

SECT. IX. It is not unlawful to swear.

Now the sum of what hath been said concerning Solution of the Bond in an Oath is briefly this, That the Bond of an Oath cannot be released by Dispensation of any Superior, or Commutation, so as to free the Conscience of the party swearing from performance of the promise: but may nevertheless be rescinded and made void by a Superior having lawful authority, cease through defect of the matter; or be relaxed by him unto whom the promise was made, so as to lose all strength of obligation. The promise which I made at my entrance upon the Office of Public professor, being now (by God's assistance) performed, according to my talent, with as much brevity, perspicuity and fidelity, as I have been able; I thought fit to add some few admonitions concerning the use and abuse of Oaths, as Corollaries, whereby our lives, and Consciences may be profitably directed, not by way of exhortation, as they use in Sermons, but remembering I teach in the School, and not in the Church, by way of Thesis, or practical Conclusions, briefly proposed, and clearly explained.

SECT. X. The custom of swearing in ordinary discourse evil.

The first Conclusion is against Anabaptists and Socinians, That the use of Oaths is lawful. I prove it first by the practice in the Old Testament. The godly Patriarchs sware; Controversies were determined by oath according to the Institution of Moses in the Law; the Prophets prescribed the condition of oaths to be observed. Nor can any just reason be rendered, why this should be lawful for the pious under the Old, and not for the faithful under the New Testament; seeing it is apparent from the end of an oath, whose use is perpetual, that it appertaineth not unto the Ceremonial Law abrogated by Christ; and from the form which seemeth to have

nothing common with the type. I prove it, secondly, by the example of God, of Angels, of Apostles: those being often introduced in holy Scripture, swearing after the manner of men, these Historically. Thirdly, by the custom of all Nations, who directed by the light of Nature, have judged the bond of an oath for the convenience of Civil Society, the surest confirmation of Faith, then which there can be no clearer discovery of the Law of Nature. Fourthly, from the end of an oath, which is the confirmation of truth in doubtful matters, where all other proofs are deficient; which end seeing it is necessary for the composing and determination of Controversies, it must needs be that the necessary means unto the end, should be at the least lawful. Fifthly, from the nature of an oath containing nothing in itself which is intrinsically evil; for neither is a religious act evil, nor the Confirmation of a doubtful thing evil, nor Invocation of Divine testimony evil; of which members the essential definition of an oath consisteth.

SECT. XI. A man ought not to swear without necessity.

The second Conclusion, The use of Oaths in common discourse is unlawful. The first proof is from the nature of an oath, Because every religious act being a part of Divine Worship ought to be performed with due reverence, and with some both preparation and attention; all which must needs be far off, when oaths are rashly scattered without judgment, or heedlessly without consideration. The second from the end, which is the confirmation of a doubtful business, seeing our ordinary discourse is for the most part upon frivolous matters, which either are not doubtful, or not of moment to require religious confirmation; or if they were, would be little more credited for his oath, who maketh swearing his common custom; for such will

be as soon believed, if that which they say seem true, without an oath, or if otherwise, no whit the sooner for swearing. The third from the Cause whence such kind of Oaths are derived; which is either a vicious habit contracted by long and pernicious custom; which habit is the fruit, and mark of a profane, if not Atheistical heart; or some exorbitant perturbation of the mind, as excessive anger, intemperate joy, with which whilst the mind boils, the mouth foameth to the dishonor of God; and at which those words of James seem peculiarly to aim; Chap. 5, verse. 12. But above all things, my Brethren, swear not, neither by Heaven, neither by the Earth. In the foregoing verses, he exhorteth the faithful to suffer injuries with patience, and in the following verse teacheth the Christian how to entertain himself whether he be sad or cheerful: a place worthy to be the exercise of learned men, and something more diligently considered, then as yet it hath been by Interpreters. Perhaps this cursory Paraphrase upon the words such as it is may contribute something towards that end; as it seemeth unto me they express thus much. Set the examples of ancient Prophets and holy men before your eyes. If ye suffer adversity, imitate their patience. If in all things you cannot attain to that perfection, yet thus far at least, except ye be extreme negligent, you may go with ease, above all things, take heed lest too impatient of your grief, or too much transported with your joy, ye break forth into rash oaths, to the dishonor of God, and shame of Christian conversation. But rather contain yourselves, whether troubled or rejoicing, within the bounds of modesty; mingle not heaven, and earth; let not all things be filled with your oaths and clamors; if you affirm orderly a thing, let it be with calmness, and a mere affirmation, or negation: But if either of these passions be more impetuous, and strive to overflow the narrow channels of your bosoms, it will be your wisdoms to let it forth unto the glory of God. Do you demand by what means? I will tell you: Is any amongst you afflicted? Let not his impatience break forth into oaths and

blasphemies, the floodgates of wrath; but rather let him pray, and humbly implore God that he would vouchsafe him patience, till his heavy hand be removed. Is any merry? Let him not bellow it forth in Oaths, like a Bacchanalian, but rather sing it in Hymns and Psalms unto the praise of God; who hath made his cup to overflow, and crowned him with happy days. If any man admit not this latitude unto the Apostles words, let him use his own judgment. I have only expressed that which I think probable, and give no man Law. But to return, if I have digressed; it is certain that the words of James altogether condemn that evil custom, which is now grown amongst high and low men of all sorts inveterate. It would cost me many leaves to sum up that which hath been declared against this impious use by holy Fathers, ancient Doctors of all Nations, Hebrews, Greeks, Latins, yea even Heathens; of many take a few: Sirach the wisest of the Hebrews, Accustom not thy mouth to swearing: As a servant that is continually beaten, shall not be without a blew mark, so he that sweareth, and nameth God continually, shall not be faultless. A man that useth much swearing shall be filled with iniquity. Amongst the Greeks, Eusebius the Heathen Philosopher, Many (saith he) exhort men to swear the truth, but I am of opinion that men ought not easily to swear at all. Amongst the Latins, Augustine; Beware of oaths as much as you may, because it were better not to swear, though a truth; not that it is sin to swear truth, but that it is a most grievous one to swear falsehood; into which he may the sooner fall, who accustometh himself to swearing. And in another place, a false oath is destructive, and even a true one dangerous. But what need is there of other testimonies, seeing this daily and unnecessary use of swearing is so positively forbidden, as scarce anything more in holy Scriptures; by Christ himself; But I say unto you swear not at all; and by his Apostle St. James, in the place cited, Above all things swear not.

SECT. XII. Cautions in oaths required by others.

The third conclusion, An oath ought not to be made but upon a just, weighty and necessary occasion. An oath is of those things which are neither evil in themselves, as murder, sacrilege, perjury, and all other vices be; nor of those which are desirable of themselves, as deeds of Charity, Justice, Obedience and all other virtues; but of such as are good only because necessary, by Hypothesis, and for their end, and not desirable, but in order unto that end, of which sort are all those which are ordained for the redress of some defect, as Physic. For as a medicine was not invented for itself, but for health; and as there would be no use thereof, if men's bodies were not obnoxious unto diseases, (Honor the Physician for necessity sake:) so an oath is instituted for the confirmation of faith amongst men; nor would be of any use, if mankind were not alas too subject unto ignorance, and perfidy; which perhaps was our Savior's meaning by those words, Matth. 5. 37, cometh of evil. Wherefore as the use of Physic, where it seemeth not necessary to the preservation of life and health, is to be avoided: so oaths are likewise to be avoided where necessary preservation of human society, and confirmation of faith seem not to require them. That admonition of Epictetus (as all the rest of that Stoic) is wholesome, Avoid an oath, if you can, wholly: if not, as much you may. An oath is a sacred thing, but by how much the more sacred, by so much the more dangerous, if unduly taken. As medicines of the greatest virtue and efficacy are the more hurtful unto the body, if rashly and unskillfully administered. The use of assertory oaths is necessary in Commonwealth's, especially in Courts of Justice, for the investigation of truth in matter of particular fact, whereunto belong oaths, witnesses, Compurgators, &c. In extrajudicial and private businesses, it is not so frequent, yet it may

be sometimes necessary; to wit, where it concerneth a man very much to be believed, and he cannot be believed except he swear. The promissory oath is of no use in Justice, but of very great in extrajudicials, both public and private. First public, to keep subjects in allegiance unto their Princes; for the confirmation of Leagues and Contracts of Kings and Commonwealths; for the observation of Laws, and Statutes; and consequently honor, order, and peace of politic bodies, and Societies; for the faithful administration of public Offices, and the like. And also private, as the Ancients often used it, for establishment of Contracts; performance of Conditions between buyer and seller; payment of debts; restitution, loans, profits, trusts, &c. But in most matters of private concernment, other ways may be taken with less scruple of Conscience, and better assurance against the perfidy of wicked men: as Pawns, Feoffees, Bonds, Witnesses, and other judicial obligations. And where such may be conveniently used, it is best to abstain altogether from oaths; lest by frequent swearing, and upon slight occasions, the too familiar use of a thing so sacred degenerate into contempt; or whilst we practice swearing, we learn perjury. Augustine saith truly; Except a man have tried, he cannot know how hard a thing it is to shake off the custom of swearing; and not to do that rashly, which sometimes he must do necessarily.

SECT. XIII. An oath is not to be taken with an unsatisfied
Conscience.

The fourth Conclusion; It is a grievous sin, unduly to exact an oath. Now he exacteth unduly, First, who compelleth another to take an oath, which is neither ordained by the Law, nor received by custom, nor established by undenied prescription, without Intermission.

Secondly, who exacteth an oath evidently repugnant, or which seemeth by that sense, which the words bear, according to their use in common speech, to be repugnant unto a former oath lawfully taken. Thirdly, who compelleth another to swear unto an unlawful thing; to wit, against his duty to God, to his Superiors, against the Laws of the Kingdom, against a good life. Fourthly, who offereth an oath of ambiguous sense, or any way captious; thereby to ensnare the conscience, life, liberty, or fortune of his neighbor. Fifthly, who without necessity either terrifieth any person by threatening's, compelleth him by authority, or inveigleth him by persuasion; example, deceit, or other means to an oath, which he knoweth to be against the Conscience of that person. Would to God all such as are in Authority would seriously consider with what a foul and indelible brand, Jeroboam the son of Nebat hath stigmatized his name and Conscience, in causing the people of Israel to sin, and how grievously they provoke the Lord to wrath, who abuse the power he hath given them for the edification unto the destruction of others.

SECT. XIV. An Oath is not to be taken with a relucting and unsatisfied Conscience.

The fifth Conclusion; An Oath is not to be taken with a relucting and unsatisfied Conscience. The first proof, because that which is not of faith is sin. The second, because we ought to swear in Judgment: which certainly he doth not who goeth against the judgment of his Conscience. The third, because such an action must needs be occasioned by regard had unto some temporal advantage, or fear of some loss, or hope of some profit, or desire to obtain favor, or the like. And how ill doth it become a Christian to prefer the world before God, dirt before heaven, the body before the soul, temporal

gain before eternal joy, the follies of this before the hopes of eternal life, external peace before the quiet of Conscience? The fourth, because the party so swearing evidently exposeth himself to the danger of perjury. For he who through fear, or hope of any temporal loss or gain, may be induced to swear, will hardly if the like fear or hope dissuade, be induced to perform his oath, and yet Heathens themselves have numbered perjury amongst the most heinous crimes, which kindle the anger of the immortal God's; not against the guilty only, and their posterity, but even to the destruction of whole Nations. How much more ought we acknowledging the only true God, who hath solemnly professed that he will not hold him guiltless that taketh his Name in vain, to fear and tremble, lest whilst we behold on every side the plentiful and luxurious crop of Oaths and Perjury, grown already ripe for the Harvest, God the most just Judge, to the utter destruction of so perfidious and profane a generation, should instantly thrust in the sharp sickle of his judgments? We have already been sensible that our most merciful Father is provoked unto wrath, and his infinite patience wounded and (as I may say) overcome with our intolerable wickedness, converted into fury. Where all are extreme, it is not easy to say for what particular crime. Yet certainly he who seriously considereth how far we have been, since God hath smitten us with a more heavy hand, from bewailing those most grievous sins of oaths and perjury, nay rather how vastly they are increased, here through the uncontrolled, and unpunished licentiousness of oaths and blasphemies, there through the foul Hypocrisy of perjury hid under the specious pretense of Religion, cannot choose but think upon those words of the Prophet Jeremiah; Through Oaths the Land mourneth.

Wherefore Men, Fathers, and Brethren, I beseech you as many as are here present, and all, wherever they be, who wish well unto the public peace of this Church, and Kingdom, or to the private of their

own souls, and Consciences, that we take most diligent heed, lest we fall into contempt of God's most holy Name, and violation of our own faith; that we fly all unnecessary Oaths, constantly refuse those which are unlawfully required, faithfully perform those which we have lawfully taken, as far as is in our power, courageously restrain the licentiousness of sin in oaths; and continually implore our great and good God, that he would give us (being taught by his correction, and humbled under his most powerful hand) hearts to fly unto his mercy, to acknowledge his Justice, to implore his grace, for the remission of all our sins, amendment of our lives, and salvation of our souls, by and through the merit of our Lord Jesus Christ; to whom with the Father, and the holy Spirit, three Persons, and one God, be the Kingdom, the power and the glory, forever and ever.

Amen, Amen.

FINIS.

MONERGISM BOOKS

The Obligation of Oaths, By Robert Sanderson.

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ePub, .mobi & .pdf Editions November 2023. Requests for information should be addressed to: Monergism Books, PO Box 491, West Linn Or 97068

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