Question to be said among the Doctors of the Civil Law, whether an heir is bound to perform and fulfill the promissary oath of his predecessor, so as to be liable to the punishment of perjury in case of Contravention: In Answer to which 1/ it is Certain, that a promissary oath made by one Decedent in favour of a particular person, will oblige the promissor first heir to performance; as to which the Decedent and his heir to whom the estate doth pass with the Charges and incumbrances, are in a Legal bond and the same person. But such an heir could not be subject to the punishment of perjury for Violation of an oath he never made. Prosp. Farin. de falsitat. & simulat. Quæst. 160 n. 117 & 20 Matth. de criminib. ad L. 4 Tit. 11 lib. 48 cap. n. 3/ When a National oath is made by one people to Divine, a Violation of that oath by the posterity of the Nation is a sword it seems to be punishable as perjury, Ant. Matth. Ibid. Because a Nation or people is not Understood to die but to continue the same l. 76. De Judiciis. Thus Christians famine came upon the Land of Israel from one of the children were hanged, for his breach of faith given to the Gibeonites by Joshua and the princes of Israel, Joshua 9 punctu 2 fam. 21. Sir George M'Kenzie Crim. part 1 p. 2984) thinks, that the the Contravention of National oaths as the Covenant and Declaration made by parliament is punishable upon the Children in Foro Divino; notwithstanding punishment is due for the Violation of such oaths which by the swearers, or by their Posterity.

5/ A Quaker by wilfully and Corruptly making his solemn Declaration and affirmation, allowed by law in Lieu of an oath, is guilty of perjury 7 & 8 W. 3 cap. 34 1 Geo. 1 cap. 6. Junct. 8 Geo. 1 cap. 6. Quæritur if a Quaker false Declaration upon honour, will infer the guilt of perjury?

6/ It is Debated among the Doctors of the Civil Law, if a person to whose oath any thing is Judicially Referred swearing falsely, may be accused of perjury. Some think that when one party swears any thing Judicially

Judicially upon a Reference made to his oath by the other, he cannot in that case be charged with perjury, but solum Deum habet Ultorem Jul. Clar. lib. 5 § Perjurium n. 13 Boer. Decid. 305 Pod. n. 4. Arg. Gilb. l. 2 Ff. de Reb. Cred. Because the Antagonist made him a false Judge in his own case. But this is all together Disagreable to our Law, and hardly Consistant with Reason. For avaricious interest is a sufficient Bait to perjury without the Addition of Impunity. Thus the a party who Refers his cause to the others oath, must stand to its Decision by that oath; Yet he is not tied up from prosecuting the perjurer Criminally, Nay tho he should by fraud or fear, vi et metu lib. vocate may do it l. 21. l. 22. Ff. de dolo Malo. For perhaps would the party have put his cause upon that issue had he not expected that the punishment of perjury would have been a Check to his Adversaries swearing falsely. Thus it was found Relevant to make and qualify of perjury, that he had in Juramento Voluntario Dolate in a Civil Action Judicially denyed or Contradicted upon oath what he had formerly from fear to do; tho the Import of that oath had not been Decided by the Civil Judge, 10 January 1716 George Montgomery of Moradun. Because the oths not happening to be decided in the Civil Action, thro the parties transacting their Differences, could not hinder the Criminal Judge to decide the Import of it in order to punish a perjurer. Yet in some cases, as when an Ancient fact is Judicially Referred by one party to the other oath, the Lords use at that other Defence to Declare, that he shall not be liable to perjury upon the account of his Necessary oath in that Matter. Mackenzie Crim. part 1 Tit. 29 § 5. Most of the Doctors hold, that one to whose oath a Judiciall Reference is made by his adversary, may be charged with perjury for swearing falsely in a Civil, but not in a Criminal cause. Prosp. Farin. de falsitat. & simulat. Quæst. 160 n. 294. 381. Enia licet cuiq; Suum Reo in ordine Sanguinis. But Antonius Matthæus Cde Crim. ad lib. 47 Dig. tit. 5 cap. 1 n. 6 is of Opinion, that one who Refers and swears Judicially a Crime Referred to his Oath, is liable to double punishment, by being found Guilty of the Crime Charged upon him