

## Lancashire Quakers and the Oath, 1660–1722<sup>1</sup>

THE Quaker refusal to swear was one of the outward testimonies which frequently brought Friends into conflict with the established authorities of church and state, leading to personal and financial “sufferings”. The laws which required oaths to be used were of two distinct varieties.

First, there were those directed against the post-Restoration dissenters, the majority of which laws were suspended by the Toleration Act of 1689.<sup>2</sup> For Friends the most important of these, in theory, was the Quaker Act of 1662, the purpose of which was to prevent any person from refusing to take an oath, and the Conventicle Act of 1664 which laid down that the refusal to take an oath in court was punishable by fines and transportation.

Secondly, Friends were open to sufferings through the operation of a variety of laws concerning matters of trade and property which demanded the sanction of an oath. Foremost in this category was the requirement of oaths in order to import and export goods, prove wills, enter copyholds and gain freedoms. Furthermore, Friends might be called upon to swear in order to serve a number of offices from alderman to constable.<sup>3</sup> Earlier legislation, notably 7. Jac. I. c.6., which

<sup>1</sup> I would like to thank Edward Milligan and Michael Mullett for reading and commenting on earlier drafts of this piece, and Craig Horle for the many insights he afforded me into the workings of the seventeenth century legal system. Spelling, punctuation and capitalisation have in general been modernised in quotations. Dates are given in Old Style.

<sup>2</sup> 1 Will. & Mar., c. 18, provided that a dissenter taking the Oath of Allegiance, or a declaration to the same effect and a declaration of fidelity and Christian belief, would be exempt from penalties under the Conventicle Act, the Act of Uniformity and the Quaker Act.

<sup>3</sup> 14 Car. II, c. 1, 16 Car. II c. 4. For a general summary of the legal and civil disabilities caused by non-swearing see Arnold Lloyd, *Quaker social history*, (London, 1950), p. 80–83. For the use of oaths at the customs see E. Hoon, *The Organisation of the English Customs system 1696–1786*, (Newton Abbot, 1968), p. 243–369. For the matter of Friends proving wills see H. Forde, “Friends and authority: a consideration of attitudes and expedients with particular reference to Derbyshire”, *Jnl. F.H.S.* 54 (1978), p. 115–125. Oaths were also required of Friends if they wished to qualify themselves as electors: I intend to discuss this matter elsewhere. Many of the oaths put to Friends were originally designed to force recusants to deny the power and authority of Rome. For a list of oaths directed against Catholics see Ann M. C. Forster, “The Oath tendered”, *Recusant History*, Vol. 14 (1977), p. 86.

required any person over the age of eighteen to take the Oath of Allegiance when demanded by two Justices (often in practice a single Justice) was used both before and after the implementation of the Clarendon Code. The punishment for this refusal was imprisonment and the threat of *praemunire*.<sup>4</sup> There was little doubt that the purpose of this restrictive net went beyond the mere discovery and punishment of dissenters, as was made clear to George Fox at the Lancaster Assizes of March 1664 when he was told by the presiding Justice that "the King was sworn, the Parliament was sworn, and he and the justices were sworn, and the law was preserved by oaths."<sup>5</sup>

In Lancashire as in many other counties, Friends rigorously maintained their testimony against swearing whenever it was seen to be brought into question. In 1676 Lancaster Monthly Meeting ordered that

John Townson and Henry Wilson do go and exhort and admonish William Eccleston and see if he will condemn the evil action of swearing or making oaths, contrary to the practise of truth . . .<sup>6</sup>

and when some four years later Emy Hodgson, a Friend from Swarthmore Meeting, swore in front of a justice on the Act for Burying in Woollen, she was ordered to write a paper denying her actions and present the same to the court at which she had sworn.<sup>7</sup> In 1693, following enquiries from the Meeting for Sufferings in London as to what form of words, if any, Friends might accept from parliament in place of an oath, the Quarterly Meeting for the county decided

<sup>4</sup> W. C. Braithwaite, *The Second period of Quakerism*, (London, 1921), p. 14-15.

<sup>5</sup> George Fox, *Journal*, ed. John Nickalls (London, 1975), p. 483-484; Chief Justice John Kelying thought the refusal to swear would "subvert the Government, because without swearing we can have no justice done, no law executed, you may be robbed, your houses broken open, your goods taken away and be injured in your persons, and no justice or recompense had because the fact cannot be proved . . .", quoted in Craig Horle, "Judicial encounters with Quakers 1660-1688", *Jnl. F.H.S.* 54 (1977), p. 98.

<sup>6</sup> Lancaster Friends' Meeting House, (hereinafter cited as LFMH) Lancaster Monthly Meeting Minutes, Vol. 1, 18.viii.1676.

<sup>7</sup> Friends House Library, London, (hereinafter cited as FHL) Swarthmore Women's Monthly Meeting Minutes, Vol. 1, 11.xii.1678, 11.i.1678-79, 6.iii.1679.

that yea yea and nay nay ought to be stood by and to and that nothing more be offered or accepted to or from the Government to ease the burthen of oaths but what truly is commanded with Christ's command.<sup>8</sup>

This decision prepared the way for a repudiation in Lancashire of the ease which was granted to Friends over the matter of swearing in the Affirmation Act of 1696. The wording of the affirmation, which included the phrase "in the presence of Almighty God", had only been accepted as an expedient by the Friends lobbying parliament, who faced severe opposition from the supporters of the established church. However, to many Friends in both the north and south this practical and politic expedient was little more than another oath, invoking as it did the presence of God to give sanction to the words of the speaker. It was not until 1722, when a perpetual affirmation omitting reference to God was granted, that Lancashire Quarterly Meeting decided that it could accept the form of words offered in place of an oath. Thus, Friends were open to prosecution for refusing to swear or affirm in the circumstances outlined above for a period of some sixty years following the Restoration.<sup>9</sup> It is the purpose of the following study to examine in detail the recorded sufferings of Lancashire Quakers for refusing to swear, and to suggest some reasons for the results that emerge.

Friends constructed, with a fair degree of success, a sophisticated network for recording, verifying and transmitting all instances of conflict with the world. Written accounts, signed, initialled or marked by the individual concerned and two witnesses (usually neighbours, and not always Friends) were taken from each Particular Meeting to the clerk of the Monthly Meeting. One copy would be kept (sometimes being entered into a book) and another sent to the Quarterly Meeting for Sufferings, which would make a general report to the Quarterly Meeting. Copies of each case would be entered into a county Book of Sufferings, and the accounts would then be carried up to the Yearly Meeting in London by the county's representatives. Once in London, the year's sufferings would be checked, and totals as to the number of

<sup>8</sup> LFMH, Lancashire Quarterly Meeting Minutes, Vol. 1, 3.xi.1693, 1.viii.1696.

<sup>9</sup> 7 & 8 Will. III, c. 34, 8 Geo. II, c. 6; Lancashire Quarterly Meeting Minutes, Vol. 2, 13.ii.1722.

each type of incident, the total amount of money or property seized, and the number of Friends imprisoned would be made and entered in the Yearly Meeting Minutes. At this point bundles containing the accounts from each county were collected and left with the clerk of the Society (later described as the recording clerk) to be transcribed into the Great Book of Sufferings. These yearly volumes, containing written accounts, county by county, of all prosecutions and other instances of persecution (for example, common assault or the seizure of tithe without warrant) are extant from the later Commonwealth period to 1856, and are preserved at Friends House Library, London.

The figures shown in table A are drawn from two sources. Those in parentheses are from Joseph Besse's *Collection of the sufferings of the people called Quakers* (1753), ostensibly drawn from the same annual accounts that were used to compile the Great Book of Sufferings, and covering the period 1660–1689.

Table A

*Sufferings of Lancashire Quakers for Refusing to Swear, 1660–1722*

	1660– 1669	1670– 1679	1680– 1689	1690– 1699	1700– 1709	1710– 1719	1720– 1722
Refusing the Oath of Allegiance and "For not Swearing" (196)	252	11	1				
Refusing to Swear in Tithe Cases	13	15 (1)	12 (13)	41			
Refusing to Swear in Chancery and Exchequer		3					
Refusing to Swear for Manufactured Goods						14	
Refusing to Swear for Office	8	2	2		1		
Other			3 (2)	2			

The main set of figures, covering the period 1660–1722, come from the sections of the Great Book of Sufferings containing the returns sent to London from Lancashire. Material from the Lancashire Quarterly Meeting Book of Sufferings has not been included in the main sequence, for samplings showed it to be particularly inaccurate for the period 1660 to 1670, when little systematic recording seems to have taken place at a local level.<sup>10</sup>

I have divided the cases in which Friends refused to swear into six sections. In the first place, and most markedly just after the Restoration, Quakers were penalised for refusing the oaths of allegiance and supremacy. Many entries in Besse and the Great Book of Sufferings give no clear indication of the exact type of prosecution that Friends were under in this respect. This was the case, for example, with the 41 Bickerstaff Friends “sent . . . to the common jail at Lancaster” early in 1661 after Justice Nathaniel West had asked them “if any would take the oath”; their refusal led to committal, as did that of the eight Quakers taken at Thomas Patefield’s and imprisoned “for refusing the oaths” before two Justices.<sup>11</sup> We may safely assume that in those cases the phrase “the oaths” was shorthand for the oaths of allegiance and supremacy commonly built into post-restoration discriminative measures such as the 1661 Corporation Act. So we may group these “sufferings” together with a large number of cases in which Friends’ refusal to swear allegiance and supremacy was specified in the record.

A second category of non-swearing compounded the offence that Quakers committed in law when they refused to pay their tithes. Thus it was with the 33 Friends “who came to jail on the 28th day of the 2nd month last (1691) upon attachment for not answering upon oath to their adversaries Bill for tithe . . .”<sup>12</sup> Thirdly, I have grouped together a number of cases in which Friends felt themselves to be penalised by “great sufferings, and extreme hardships in our persons and estates, . . . being not admitted by law, to answer in the Court of Chancery and Exchequer without oath” in

<sup>10</sup> FHL, Great Book of Sufferings, Vol. 1–16, (hereinafter cited as GBS); Joseph Besse, *Collection* (2 vols., London, 1753), Vol. 1, p. 300–330; LFMH, Lancashire Quarterly Meeting Book of Sufferings, Vol. 1, 1654–1700, *passim*.

<sup>11</sup> GBS, Vol. 1, p. 561, 13.xi.1660; Besse, *op. cit.*, Vol. 1, p. 309, 13.i.1661.

<sup>12</sup> GBS, Vol. 5, pt. 1, p. 262, 28.ii.1691.

civil suits over matters of debt and land-titles.<sup>13</sup> Next comes a class of sufferings stemming from Friends' refusal to comply with the government-imposed sworn attestations accompanying the manufacture or import of such goods as "candles or leather (which require the taking of an oath, or the present affirmation)"—refusals which, it was claimed in 1721, "have already ruined some, and apparently tend to the ruin of many more".<sup>14</sup> Fifthly, some Quakers were called upon to swear oaths when they were drafted or elected, perhaps maliciously, for local government office. Finally, there were miscellaneous actions ("other" in the table), under the Burial in Woollens Act and for refusal to swear in other cases.<sup>15</sup>

The table omits prosecutions under the Quaker and Conventicle Acts, when Friends were proceeded against as Quakers or religious dissenters meeting in breach of the law. In all the cases in the table, Friends fell foul of the law, for refusal of oaths, either as subjects (allegiance and supremacy), parishioners (tithe and other dues), litigants (title and debt), merchants and manufacturers (leather, etc.), or citizens (local office).

Out of a total of 380 individual sufferings recorded for refusing to swear in the Great Book of Sufferings, 322 occurred between 1660 and 1689. Nearly 70% of these were confined to the two years following the restoration of Charles II. In 1660 the number given for refusing to swear was 58, whilst 105 Friends refused the Oath of Allegiance; the following year the figures were 35 and 13 respectively. These figures, and the method in which oaths were tendered to Friends at this time, are consistent with the interpretation of persecution in these early years as representing a purge by an insecure regime of the politically suspect.<sup>16</sup> Friends in all parts of the county were arrested and imprisoned for refusing to swear: at Yealand "the constable of the town with several

<sup>13</sup> *The Case of the people commonly called Quakers, with some reasons humbly offered . . .* (London, 1696), p. 1; see also *A Brief representation of the Quakers case of not-swearing*, (London, 1694) [Wing E141], *passim*.

<sup>14</sup> *The Case of some thousands of the people called Quakers in Great Britain who conscientiously scruple the present affirmation*, (London, 1721).

<sup>15</sup> GBS, Vol. 3, pt. 2, p. 851, 6th. month 1683, p. 881, 8.viii.1684; Vol. 5, pt. 1, p. 262. 16.iv.1690; Vol. 7, pt. 1, p. 303, 6th. month 1693; Besse, *op. cit.*, Vol. 1, p. 329, 1684.

<sup>16</sup> For these figures see Table A. Braithwaite, *op. cit.* p. 8-14; W. W. Spurrier, "The persecution of the Quakers in England" (University of North Carolina, Ph.D. thesis, 1976), p. 119, 145-147.

soldiers with swords and pistols entered the house and seized the whole meeting", sending 26 Friends to Lancaster Castle; the following day the armed soldiers returned and took the remaining twelve to the same destination.<sup>17</sup> Seven days later twelve Friends were taken at Bickerstaff "by soldiers, who said they came by order of the Earl of Derby", and having refused the Oaths of Allegiance at Wigan, were taken to the county jail. The thirteen Friends who were taken at a meeting in Manchester in June 1661 were met by troops of a more nervous disposition, for

the meeting being ended there stood armed men with halberks [halberds] and pikes threatening to slay them if they came upon them, and immediately came the men called justices and apprehended them and tendered them the oath of obedience as they called it, but Friends in the fear of the lord denied to swear . . .<sup>18</sup>

It is interesting to note that this highly organised operation against Friends did not always rely on their reluctance to swear in order to incarcerate them. In February 1660/61 "at Swarthmore, forty three persons were taken, some out of their houses, others from the market, and some from their labour and employments, by a party of horsemen, and without any warrant, *Mittimus*, or examination before a magistrate, committed to Lancaster Castle".<sup>19</sup>

The surprising thing about this exploitation of the Quaker refusal to swear is not its ferocity, but the fact that it ended as quickly as it did, especially as this was just at the time that national legislation, in the form of the Quaker Act, was being introduced. After 1661 the number of prosecutions for refusing to swear or take the Oath of Allegiance exceeded ten on only one occasion, in 1668. For the most part the prosecutions and sufferings that involved the taking of an oath after this initial outburst were concerned with tithe prosecutions, and at the end of the period, customs.<sup>20</sup> Given the sudden decline in these prosecutions, and given the fact that Friends

<sup>17</sup> GBS, Vol. 1, p. 561, 13.xi.1660.

<sup>18</sup> GBS, Vol. 1, p. 561, 20.xi.1660, p. 563, 16.iv.1661.

<sup>19</sup> Besse, *op. cit.*, Vol. 1, p. 308, 24.xi.1660.

<sup>20</sup> The largest number of Friends who suffered for not swearing in any of the given categories in Table A on any one occasion was 33, who were imprisoned "for not answering upon oath, to their adversaries bill for tithe", GBS, Vol. 5, pt. 1, p. 262, 28.ii.1691.

did not alter their position regarding oaths at this time, it can only be concluded that the use of an oath as a political weapon was superseded by the opportunities afforded to the authorities by the Conventicle Act of 1664 and other items in the "Clarendon Code". This implies that the authorities were not primarily interested in oath-swearing but merely used oaths to show up the presence of Quakers and to prosecute them for an "offence", being Quakers and attending conventicles, which before 1662 and 1664 was not clearly illegal.

During the sixty-two years for which data has been gathered only 13 Friends are recorded as having suffered for refusing to qualify themselves for office on oath. Of these, nine were called to serve as jurymen either at local courts or the assizes at Wigan or Lancaster. Of the remaining four Friends, two are simply recorded as having been called to serve an "office", one as a constable and the last, Miles Birket

was returned at the Court Baron held in the parish of Cartmel to serve the office of a massman, which said office he did accept of and serve, but it appearing at the next court held in the year 1709 that the said Miles had not been sworn to serve the said office, he was fined by the said court six shillings and eightpence,

eventually having goods distrained to the value of nine shillings.<sup>21</sup> The above incident illustrates what must have been a dilemma for many Friends, for although having no objection to holding such offices they were at least in theory prevented from doing so by the barrier of customary or statutory oaths. However, in Lancaster at least 14 Friends have been identified as having held minor offices of the corporation during this period, and a similar situation seems

<sup>21</sup> GBS, Vol. 11, pt. 2, p. 448, 17.xii.1709. A massman was probably a church-warden, elected annually in the local manor court or vestry. Although oaths could vary between parish and diocese, a warden would usually have to swear "you shall execute the Office of a Churchwarden in the Parish where you are chosen for this ensuing year, according to your skill and discretion in his Majesty's Laws, ecclesiastical now in force, so help you God". For the selection and duties of a churchwarden see S. A. Peyton (ed.), *Minutes of proceedings in Quarter Sessions held for the Parts of Kesteven in the County of Lincoln 1674-1695*, (Lincoln, Lincoln Record Society, Vol. 25, 1931) p. lv-lvi; L. M. Hill "County government in Caroline England 1625-1640" in Conrad Russell (ed.) *The Origins of the English Civil War* (London, 1973), p. 76. For a variety of churchwardens' oaths see *The Book of Oaths* (1715) p. 222-224, appendix, p. 5. I owe this particular reference to Dr. J. William Frost of Swarthmore College, Pennsylvania.

to have existed in Bolton.<sup>22</sup> The Toleration Act of 1689 allowed Dissenters to act in office by deputy if they were elected or appointed to a post outside the scope of the 1672 Test Act, which required an oath of entry. Friends, however, continued to serve in such burdensome offices as that of constable, where the appointee was legally required to swear "so help me God" that he would perform his duties. Furthermore, there was the added danger that, as constable, a Friend might be called upon to enforce the law against his co-religionists.<sup>23</sup>

In tithe actions personal inclination often determined the course that a prosecution for non-payment of tithe would follow, and the method of prosecution in turn determined the likelihood of Friends being called upon to swear. Whilst the use of the Oath of Allegiance in an open court was a convenient method to combat the danger perceived in the activities of Friends, the tender of an oath in an ecclesiastical court in a case of tithe merely prolonged the waiting of a cleric or lay impropriator for the payment of the claimed amount. Out of the 80 prosecutions recorded for not-swearing in cases of tithe, 59 were clearly in suits brought in an ecclesiastical court, and of these 47 were sued by the same impropriator, Edmund Ashton of Whalley. Of these 47 Friends, 12 were involved in the same case in 1684, and 33 were sued together in 1691.<sup>24</sup> In the Exchequer there was more hope of taking advantage of Quaker principles in order to obtain an order of distress against Friends' goods, though the methods used, involving the process of contempt and outlawing, were both

<sup>22</sup> Nicholas Morgan, "The Social and political relations of the Lancaster Quaker community, 1688-1740", in M. Mullett (ed.), *Early Lancaster Friends*, (Lancaster Centre for North-West Regional Studies, Occasional Paper No. 5, 1978), p. 25; W. E. A. Axon, "The Pembertons of Aspull and Philadelphia, and some passages of the early history of Quakerism in Lancashire", *Transactions of the Lancashire and Cheshire Antiquarian Society*, Vol. 12 (1912), p. 161.

<sup>23</sup> For the selection and duties of a constable see Peyton, *op. cit.*, p. xlvi-liii. A variety of constables' oaths are in *The Book of Oaths* (1715) p. 207-208, appendix p. 5-6. For the case of a Friend who as a constable carried out warrants of distraint against fellow-Quakers see LFMH, Lancaster Monthly Meeting Minutes, Vol. 1, testimonies, 28.xii.1707.

<sup>24</sup> Eric Evans, "Our faithful testimony", *Jnl. F.H.S.* 52 (1969), p. 121. The ecclesiastical courts could only order payment to be made, and did not have the power or ability to enforce that order by granting or obtaining an order of distraint; see A. W. Braithwaite, "Early tithe prosecutions, Friends as outlaws" *Jnl. F.H.S.* 49 (1960), p. 151; GBS, Vol. 3, pt. 2, p. 880, 17.vii.1684, Vol. 5, pt. 1, p. 262, 28.ii.1691.

circuitous and probably illegal.<sup>25</sup> At least five Friends from Cartmel suffered in this way at the suit of Thomas Preston of Holker, and of the remaining sixteen prosecutions, eight were in the Exchequer, whilst the method of the others is not clear. Imprisonment or distrains for refusing to answer on oath seem to have been the almost inevitable outcome of a tithe case brought in either ecclesiastical or Exchequer courts. The Act for the More Easy Recovery of Small Tithes (1696) and the Affirmation Act (1696) gave Friends at least technical relief from these sufferings by introducing a summary procedure for the recovery by the plaintiff of the tithe claimed with a set allowance for expenses. The purpose of both these statutes with regard to tithe was to lessen the problems faced by the claimant during the proceedings; in Lancashire the number of Friends suffering for non-payment of tithe nearly doubled within two years of the acts being passed.<sup>26</sup>

In comparison with the ecclesiastical and Exchequer courts, there are few cases of Friends suffering for refusing to swear or appear on oath in the court of Chancery. Although it is difficult to estimate the number of cases in that court which involved Friends it is clear from a variety of sources that the matters of debt and property dealt with were essential aspects in the day to day life of merchants and yeomen farmers. One only has to examine the Quaker complaints of the hardships they faced through not swearing to realise how important the proceedings of Chancery were to them.<sup>27</sup> In Lancashire there are only three cases of sufferings in Chancery recorded between 1660 and 1722, all of which occurred within two years of each other. The nature of the particular cases does show that the substance of Friends complaints was realistic, but there is no evidence (at least in the case of Lancashire) to support the frequency with which they claimed prosecutions took place.

<sup>25</sup> Friends had obtained a legal opinion that jurisdiction in matters of tithe lay only in the ecclesiastical courts. A. W. Braithwaite, *op. cit.*, p. 150, 152-155.

<sup>26</sup> Besse, *op. cit.* Vol., 1, p. 329; 6 Will. III, c. 6 & 34; Morgan *op. cit.* p. 27-28.

<sup>27</sup> *A Brief representation of the Quakers case*, (1694), p. 3-5; *The case of the people called Quakers with respect to many of their friends in South Britain, and their Friends in general in North Britain, who conscientiously scruple the taking of the present affirmation*, (London, 1720), *passim*; *The case of the people called Quakers, relating to oaths and swearing*, (London, 1673), p. 6.

Henry Ashton, a distiller of Ormskirk, was sued in Chancery by David Poole, his debtor to the tune of £19, "he having no other way to defraud the said Henry Ashton of the aforesaid debt, knowing that for conscience sake he could not swear."<sup>28</sup> Thomas Gee of Preston sued Hamlet Percivall in the local chancery court for an account of seven years standing,

and the said Hamlet gave in his answer, which the said Gee with many others did believe to be true, and Gee's attorney said the bill and answer did not differ a groat, and because the said Hamlet could not for conscience sake swear, it cost him seven or eight pounds.<sup>29</sup>

Thomas Crosby of Ormskirk, a grocer, was sued by a merchant from Liverpool for the sum of ten pounds, which Crosby claimed he had already paid,

and the carrier being alive did and doth affirm the payment of the said ten pounds accordingly, but to prevent him bearing evidence he was joined defendant in the suit (and) the said Thomas Crosby called to answer, and because he could not swear to it for conscience sake, it cost him ten pounds or above.<sup>30</sup>

Friends in trade were also likely to face difficulties with regard to the customs and excise. It was widely felt that there were so many oaths expected of both ships-masters and merchants importing and exporting goods that the sanction of swearing was being devalued. One non-Quaker authority claimed that perjuries were "but too frequently committed at the Custom-House, viz. That it is but a Custom-House Oath; as if God who is omnipresent, did not see, and was not equally offended at profaning his Name there, as at any other Place whatsoever . . .".<sup>31</sup> When, in 1832, many of the oaths

<sup>28</sup> GBS, Vol. 3, pt. 2, p. 748, 1675. The result of the case was that "the said Henry Ashton is under contempt for not answering . . . and the said David Poole has got an injunction to stop him from recovering his said debt, so that he is likely to loose his just debt, and he [is] imprisoned besides."

<sup>29</sup> GBS, Vol. 3, pt. 2, p. 769, 1674. This would be in the Lancashire Chancery Court at Preston. For its history and jurisdiction see Robert Somerville, "The Palatinate Courts in Lancashire", in Alan Harding (ed.) *Law making and law makers in British history*, (London, Royal Historical Society Studies in History Series No. 22, 1980), p. 58-63.

<sup>30</sup> GBS, *loc. cit.*

<sup>31</sup> Henry Crouch, *A Complete guide to the officers of His Majesty's Customs*, (London, 1732), p. 143, quoted in Hoon, *op. cit.* p. 247.

connected with commercial declarations were abolished under the Act 1 & 2 Wm IV c.4, it was explained that "From the frequent occasions on which such oaths and affirmations are required, . . . the reverence and respect which should attach to such solemn obligations have been weakened."<sup>32</sup> The Controller of the customs at Lancaster was warned in 1715 that there was some laxity in the procedure concerning the entry of oaths, and was reminded that "the oath be wrote on the original warrant being first signed by the merchant who makes the oath, and then yourselves or such of you before whom the same by law is to be administered . . .".<sup>33</sup>

How then did Friends fare in this atmosphere of oath-making and oath-breaking? It is clear from Table A that, even before the 1696 Affirmation Act, the oaths demanded at the customs were somehow avoided by Friends. In 1698 London Yearly Meeting warned Friends against using "secret and indirect ways to take up their goods without paying the customs and duties". The county Quarterly Meeting did its best to ensure that Friends made a true entry of their goods at the customs-house, and later enquired of each Monthly and Particular Meeting "how Friends were clear from being concerned in defrauding the King of his duties and excise". Furthermore, it is clear from a study of the commercial activities of William Stout and his fellow Quaker merchants in Lancaster that the official records contain numerous references to the type and quantity of goods which they were trading.<sup>34</sup> Given this seemingly large scale evasion of the official oaths, which must have involved some amount of complicity between customs-officers and Quakers, it is difficult to explain the outburst of prosecutions which took place on the passing of the Leather Act of 1711. The duty, which was administered by the Tax Office as opposed to the Commissioners of Customs, was required from all merchants importing leather, who were required to make an oath as to the value of their goods at the customs. Specially appointed officers, recruited mainly from the Board

<sup>32</sup> Preamble to the Act; quoted in Henry Atton and Henry Holland, *The King's Customs*, (2 vols., London, 1910), Vol. 2, p. 161.

<sup>33</sup> PRO, CUST 81/70, p. 4.

<sup>34</sup> FHL, Yearly Meeting Minutes, Vol. 2, p. 229, 1698; LFMH, Lancashire Quarterly Meeting Minutes, Vol. 2, 1.viii.1719; *The Autobiography of William Stout*, (ed.) J. D. Marshall, (Manchester, 1967), Appendix A, p. 282-291.

of Excise, were required to examine stocks of hides held by leather tanners and again verify the quantity of the same on oath, "which oath any Justice of the Peace or the collectors or supervisors that shall be appointed for the said duty in their respective districts are hereby impowered to administer."<sup>35</sup>

The result of the new legislation was almost immediate. Roderick Forbes, a Quaker from Aberdeen wrote to his brother in February 1711 that

a great many of our Friends are presently under suffering because they cannot verify their entries by affirmation on the late leather act, so that as I came through Cumberland many Friends' goods were distrained to the value of twelve pounds . . . although their entries were truly made and duties paid.<sup>36</sup>

A similar situation existed in Lancashire, where in 1711 nine Friends were "prosecuted by Edward Burghall of Wigan, head collector for the duty on hides and skins . . . though the said collector acknowledged the receipt of the Queens duty for the same". Burghall had previously acted as surveyor of the excise for the county, and as such must have had some contact with Quaker merchants and distillers who would neither swear or affirm.<sup>37</sup> In the north of the county five Friends were prosecuted, and in all nearly £175 was taken from the fourteen, out of a total seized from Friends in the county of £520. A letter from Swarthmore Meeting to the Meeting for Sufferings complained that "except some relief can be had from London, divers of the tanners, etc, must give up their trades", and the following year the same meeting decided to "collect the sufferings of Friends who have left their business or their trade because they did scruple the affirmation."<sup>38</sup>

The Quaker response in London to the effect of the Leather Act was cool, with the representatives for Lancashire

<sup>35</sup> 9 Anne., c. 12 [Statutes of the realm]; for the appointment of these officers see PRO, CUST 47/66, p. 35-43. The terms of the Act made no provision for affirmation in lieu of oath; this may be an indication of the harsher political climate towards the end of the reign of Queen Anne.

<sup>36</sup> Scottish Record Office, CH 10/3/35, 15.xii.1711-12.

<sup>37</sup> GBS, Vol. 14, pt. 1, p. 106, 24.iv. 1711; PRO, CUST 47/66, p. 35.

<sup>38</sup> FHL, Yearly Meeting Minutes, Vol. 4, p. 247; FHL, Minutes of the Meeting for Sufferings, Vol. 20, 14.x.1711, (hereinafter cited as MMS); FHL, Swarthmore Monthly Meeting Minutes, Vol. 4, 7.ix.1712.

to the Yearly Meeting of 1712 reporting that it was “not without some difficulty” and “after an exercise of some meetings” that the prosecutions were accepted as bona fide sufferings. The Meeting for Sufferings approached both the Attorney General and the Solicitor General for opinions on the situation of Friends who refused to either swear or affirm when making their declarations, concluding that they were “against the said Friends in their judgement”. A further report to the meeting on the Leather Act stated that “there is no relief (by the letter of the said Act) for any that shall refuse to make such entry as is therein required”.<sup>39</sup> A petition was forwarded to the Lord Treasurer’s Office stating the case of the northern Friends, but this apparently asked only that “they may have the privilege of affirmation”, something which by all accounts they had but in a form that was still unacceptable.<sup>40</sup> Indeed the Meeting for Sufferings was at pains to stress that the suffering Friends were refusing to act as the law required, and in order to dissociate itself from these actions, it refused in May 1712 to consent to the printing of a paper to be delivered to Parliament giving account of the prosecutions. It finally attempted in the same month to approach members of Parliament in order to obtain a clause “that Friends may be admitted to make their entries on a penalty in case of frauds” to be inserted in an Act for laying additional duties on hides; this method had been employed in the Hop Act of 1711.<sup>41</sup>

It seems clear that much of the apparent embarrassment of the Meeting for Sufferings at the activities of the Friends who were prosecuted for not swearing or affirming on the Leather Act was due to the fact that the Affirmation then in force was nearing the date of its expiry. A paper printed early in 1712, which publicly stated the dissatisfaction of many Friends with an affirmation that included the name of God, caused George Whitehead to write that

<sup>39</sup> LFMH, Lancashire Quarterly Meeting Minutes, Vol. 2, 3.v.1712; MMS, Vol. 20, 23.ix.1711, 30.ix.1711.

<sup>40</sup> MMS, Vol. 20, 21.x.1711; PRO, T 4/9, p. 34, 19th. December 1711.

<sup>41</sup> London Yearly Meeting, on “consideration of this new case being very weighty on Friends, not to reject or take no notice of the sufferers, have agreed that the said sufferings be now entered under this title, viz. for that they declare they could not verify their entries as the law directs.”, FHL, Yearly Meeting Minutes, Vol. 4, p. 257, 1712; MMS, Vol. 20, 17.iii.1712, 26.iii.1712; 9 Anne., c. 13 [Statutes of the realm].

The late bustle in public solicitation against the name of God in the solemn affirmation has rendered us very little as a people very weak and inconsistent in the eyes of the government; and opened the mouths of many against Friends. It has greatly offended our friends in the government and caused our adversaries to rejoice over us.<sup>42</sup>

Indeed, it is even possible to see the prosecutions under the Leather Act as the outcome of a concerted attempt by the "dissatisfied" Friends to apply pressure upon both the Meeting for Sufferings, and the House of Commons, in order to obtain a modified affirmation. Certainly it is otherwise difficult to explain the prosecutions of 1711 and 1712, which, given the unwritten accommodation between the officers of the customs and excise and the Friends of Lancashire and the other northern counties which "negative" evidence shows to have existed, need never otherwise have taken place.

If, as it would appear from the foregoing, Friends were not being called upon to swear, it remains to be shown what collusive method, if any, was being used in order to avoid a breach of their testimony. It has been shown that Quakers in Derbyshire could be "relatively certain of a favourable Anglican attitude over oaths" when proving wills, and that "there was a deliberate silence on the part of both Anglicans and Friends in many areas of the county about the technical compliance with the law" and that *Jurat* was entered against Friends names in probate cases.<sup>43</sup> In Westmorland, as a result of the influence of Gervase Benson on the officials of the court of the Archdeaconry of Richmond, Friends had 'the privilege of proving wills and taking letters of administration without oaths.' Thomas Camm, who gave account of this state of affairs in 1709 added that it had "continued to this day."<sup>44</sup> When Margaret Fox wrote an epistle criticising the

<sup>42</sup> George Whitehead to Robert Barclay, 4th. March 1712, quoted in W. C. Braithwaite, *op. cit.*, p. 192; for an account of the proceedings of the Meeting for Sufferings in relation to renewing the affirmation see Norman Hunt, *Two early political associations*, (London, 1961), p. 50-54.

<sup>43</sup> Forde, *op. cit.*, p. 124-125.

<sup>44</sup> FHL, Portfolio 7/75, p. 9-10; this is printed in N. Penney (ed.), *The First Publishers of Truth*, (London, 1907), p. 251. Benson, a former Mayor of Kendal, Justice of the Peace and a Proctor at Civil Law was Commissary of the Archdeaconry of Richmond prior to the civil war. His own position on the oath was somewhat ambiguous, maintaining that "the calling of God to witness, or saying, *God is my witness, &c.* without adding of somewhat more, is neither Oath nor Swearing . . .", and that this "true witness-bearing, as it was before swearing was, is not received in Judicial proceedings for want of an Oath . . .". In practice, he was open "unto their [men's]

Northern Friends who refused to use the affirmation granted in 1696 she bitterly complained that “when they had occasion formerly to prove wills or put in answers, they were glad to see a clerk put in *Jurat* . . . whereas now they may go plainly before the face of all to speak their solemn declaration.”<sup>45</sup>

A correspondence between Roger Haydock and the Meeting for Sufferings reveals more than any other source about the arrangements that Friends came to with ‘the world’, and it is this that will be examined in the following pages. Haydock, a Friend from Coppull, wrote to the Meeting for Sufferings in 1683, asking advice in the case of Friends who were summoned to appear in the Court of Chancery “by evil minded men, who having no right to such pretended interests as they claimed”, were attempting to exploit the Quaker refusal to swear. He explained that in fact Friends’ answers had been accepted without an oath, “yet such answers . . . were recorded as accepted upon oath, which to some Friends hath seemed a straight thing”. The letter continued

but a late Chancellor made a rule of court, that no answer should be taken but in the presence of the plaintiff’s attorney . . . otherwise he to have 6 days notice before, of the place as well as time, where and when the Commissioners sit to receive our Friends answer; this of late time hath made answers without oath more difficult to be accepted. But thus it sometimes falls when the defendants attorney knows whom the plaintiff hath joined in the commission . . . then the Friends attorney lays out to inform himself if possible when the plaintiffs commissioner is either abroad or hath such earnest occasion elsewhere, that although 6 days notice be given him, he cannot meet the other commissioners, which if it take effect as several times it hath done, then the Friends answers is readily taken without oath, but still by the commissioners recorded as accepted upon oath . . .

Was this, Haydock wanted to know, consistent with Friends’ testimony regarding swearing?<sup>46</sup>

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punishment (which hitherto, blessed be God, I and some others have found, not according to the rigour of the Law, but with some moderation)”; W. C. Braithwaite, *The Beginnings of Quakerism*, (2nd edition, London 1955) p. 91–92; Gervase Benson, *A True testimony concerning oaths and swearing*, (London, 1669) [Wing B1902], pp. 30, 39, 47.

<sup>45</sup> FHL, Miller MMS Trans, 13, Margaret Fox to Friends, 19.xi.1697–98.

<sup>46</sup> GBS, Vol. 3, pt. 2, p. 830, Roger Haydock to the Meeting for Sufferings, 11.vi.1683.

The Meeting for Sufferings clearly found it difficult to discuss such a candid account of Friends activities, for the original minute recording the receipt and substance of Haydock's letter was scored out, only to be later prefixed, "This should stand". Eventually William Shewen was nominated to write the reply to Haydock, and the meeting's answer contained in the letter was typically cryptic.<sup>47</sup> It was agreed that

Friends may have freedom in the spirit of God to offer or give their testimony in justice and truth as in the sight and presence of God, and solemnly to aver the truth of their answer in his fear, and if any court or magistrate is or shall be satisfied therewith, and account it equivalent with an oath, and record it accordingly . . . we must not shun giving testimony in our right to prevent their misinterpretation.

This phrase, a clear forerunner of the affirmation granted in 1696, was to reach "to probates of wills, executorships, freedoms in corporations, entries at customs-houses and many other things." Avoiding comment on the method of entering answers described by Haydock the letter continued

seeing that in divers weighty cases Friends testimonies, depositions and answers have been accepted and recorded by officers in trust without an oath (under) the term *Jurat* in design only of doing them a kindness as knowing their answer would not otherwise be accepted in court. It would appear disingenuous, very imprudent and unfair . . . to make a [manuscript torn] discovery of this in court against the officer . . . thereby causing such a one to be called in question and perhaps to lose his place, and not only so, but by such open discovery of such a nice scruple, cause the courts to be more inquisitive, strict and severe upon Friends. . .

The letter concluded: "This is our present sense in the matter, if anyone otherwise minded, we may say as the Apostle did in another case, the Lord will reveal it if they truly wait upon him."<sup>48</sup>

<sup>47</sup> MMS, Vol. 3, 17.vi.1683, 21.vii.1683, 28.vii.1683; there is some suggestion that Friends wished to take advantage of this liberty in order to take action against their adversaries, which the Meeting for Sufferings advised against, "Friends desiring to follow peace with all men."

<sup>48</sup> FHL, Portfolio 16/32, endorsed "Wm. Shewens answer to Roger Haydock to be presented to the Meeting for Sufferings, about recording *Jurat*.", 31st 6th month 1683. Friends clearly saw a distinction between this method and that of employing a substitute to make an oath in court. When a Quaker from Kent was convicted for this offence in 1678 the Meeting for

Two main conclusions can be drawn from the letter sent by the Meeting for Sufferings to Robert Haydock. Firstly, it is clear from its tone and contents that Haydock's account of Friends having *Jurat* entered on their behalf whilst not actually swearing was by no means exceptional, the main problem being seen in those who were uneasy about this procedure (the fact that no comment was made on the method employed by Lancashire Friends may indicate a desire on the part of the Meeting for Sufferings not to be informed of such technical details). Indeed, there was a note of pride in the suggestion that a magistrate, having accepted a Friend's word, might "it may be, commend it above their common oath", something that was doubtless also true for the acceptance of Friends' word by customs and excise officers, in preference to insincere oaths. Secondly, the reply seems to have afforded the meeting with an opportunity to present to Friends in Lancashire the form of words it was seeking as an affirmation. Haydock made no mention of any required phrase being used by Friends, and given their later position the use of the phrase "in the presence of God" by them would seem unlikely. The letter from London, however, stressed on several occasions that Friends were "clear against swearing" if they had only "in the fear of God solemnly promised or assented the truth as the case required".<sup>49</sup> Haydock had expressed concern only over the fact that Friends' plain answers were being called oaths, but perhaps in the answer of the Meeting for Sufferings we should see some anticipation of the problem which was to shake the movement to its foundations at the turn of the century.<sup>50</sup>

What then can be said of the testimony of Lancashire Friends against swearing? Certainly the Quarterly, Monthly and Particular Meetings maintained a strong discipline with

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Sufferings asserted "that we do utterly detest and abominate in our very souls the thought and much more the actions of employing or permitting any man to personate us in giving in any answer on oath as if we were the very person and the act ours", and further, "that we do esteem it a far greater crime to suborn than swear . . ." FHL, Book of Cases, Vol. 1, p. 42-43.

<sup>49</sup> *Ibid.*; the first bill for an affirmation presented to Parliament in 1690 used the phrase, "I call God to witness, and appeal to him as judge of the truth of what I shall say", W. C. Braithwaite, *Second period*, p. 181-183.

<sup>50</sup> The best account of a dispute that has in general been under-estimated by Quaker historians is to be found in Braithwaite, *op. cit.*, p. 181-204.

regard to all the outward aspects of Quaker life, exhorting and sometimes bullying Friends in order to prevent "disorderly walking". Refusal to swear was seen as a basic testimony, and thus when it was brought into question, either on the rare occasions that a Friend was discovered to have sworn or when the introduction of the affirmation in 1696 seemed to compromise Friends' testimony, the meetings acted with all their strength and unity to re-assert their position in the eyes of the world. Friends were inevitably drawn into contact with their Anglican or dissenting neighbours through their business and trade, and as sober and responsible citizens they were often called upon to serve the community in which they lived. In general the Meeting for Sufferings advised Friends to take advantage of a clause in the Toleration Act of 1689 which allowed dissenters who could not swear to act in office by deputy, but for the most part Lancashire Quakers and their fellow citizens were prepared to see the problem of oaths of entry overcome by accommodation in order to allow them to play their natural role in society.<sup>51</sup> Similarly, officers of court and customs saw little reason why these honest improvers of trade should have their right to property and profit threatened either by unscrupulous suits or strongly held scruples. Indeed, the length to which Friends' attorneys went in order to see an answer entered is some indication of the light in which Quakers were seen. It is interesting to note that only in the case of tithes, when Friends were considered to be threatening another's property rights, and the Leather Act, when a concerned group wanted to pressurise the Meeting for Sufferings, was there no obvious collusion in order to avoid the problem of swearing.

If the preceding picture of relations between Quakers and 'the world' suggests a surprising degree of harmony as opposed to hostility, it is perhaps because historians have generally followed the path of the earliest Quaker propagandists and anti-Quaker polemicists in stressing the exceptional as opposed to the everyday. It is undeniable that Friends encountered considerable hostility, often manifesting itself in

<sup>51</sup> M. Mullett, "The Assembly of the people of God: The social organisation of Lancashire Friends", in Mullett (ed.), *Early Lancaster Friends* (1978); MMS, Vol. 21, 10.v.1713.

violence, in the Commonwealth and immediate post-Restoration period, and that a residue of this persisted into the early eighteenth century. Co-existence, however, overcame conflict. Friends found support and succour (often unwanted) from their local communities even in matters relating to tithe, where they continued to challenge and defy property-holders and law enforcers, often neighbours in town or village.<sup>52</sup> In the case of oaths people managed, generally, to avoid conflict with even the most unbending Quaker's principles.

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<sup>52</sup> For a recent work on hostility to Friends see Barry Reay, "Popular hostility towards Quakers in mid-seventeenth century England", *Social History*, Vol. 5. (1980), No. 3, p. 387-407. On tithes see Morgan, *op. cit.*, p. 30-31; Evans, *op. cit.*, p. 108-109, also *The Contentious tithe*, (London, 1976), p. 60.