"Laws to punish differences of opinion are as useless as they are monstrous. Differences of opinion on politics are denounced and punished as seditious, on religious topics as blasphemous, and on social questions as immoral and obscene. Yet the sedition, blasphemy, and immorality punished in one age are often found to be the accepted, and sometimes the admired, political, religious, and social teaching of a more educated period. Heresies are the evidence of some attempt on the part of men to find opinions for themselves."

—C. BRADLAUGH.

PENALTIES UPON OPINION:

OR

SOME RECORDS OF THE LAWS OF HERESY AND BLASPHEMY

BROUGHT TOGETHER BY

HYPATIA BRADLAUGH BONNER

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CASES AND LAWS

ERRATUM

P. 24, TAYLER (1676) should be TAYLOR

INTRODUCTORY

In the year 1878 Charles Bradlaugh published a pamphlet upon *The Laws Relating to Blasphemy and Heresy*, and in December of the same year the Sunday Lecture Society issued in pamphlet form an address on *The Past and Present of our Heresy Laws*, delivered before the Society by Dr. W. A. Hunter, a man of profound and exact learning. In 1882 Sir James Fitzjames Stephen wrote his great work upon *The History of Criminal Law*, which contains a most valuable chapter upon "Offences against Religion." In 1883 came Lord Coleridge's notable summing-up in the proceedings against Messrs. Foote and Ramsey, which set the law of blasphemy in a new light, and which was commented upon by Mr. (now Sir John) Macdonell in a luminous article in the *Fortnightly Review* for June of that year, and keenly criticised by Mr. Justice Stephen in the same *Review* in the following year. Mr. Justice Stephen was himself criticised with much force and learning by legal and other writers. In 1884 Dr. Hunter wrote a further pamphlet on the Blasphemy Law for the Association for the Repeal of the Blasphemy Laws; and several useful articles appeared in the Reviews and in Freethought journals at that period and in 1889, when Mr. Bradlaugh moved the second reading of a Bill of repeal in Parliament. This literature, important as it is

to those who cherish the ideals of a free press and free speech, is now for the most part inaccessible to the general public; it is available only to the student reading in special libraries. Since 1884 a new generation has come to manhood, and the recent recrudescence of prosecutions for blasphemy has made it desirable that at least the outlines of the history of the penalties imposed upon the free expression of opinion in regard to religion should be placed before those who hold the future in their hands. We have received from our fathers priceless boons of freedom, won at the cost of much sacrifice and much suffering; and it would not be creditable if we remained so negligent of our duty to our successors that we made no attempt to get rid of the barbarous laws under which cruel persecutions are still possible.

It is in the hope that a thoughtful and enlightened public may be induced to demand the reconsideration and repeal of the Blasphemy Laws that the present writer has gathered up the threads of the painful story of these enactments and persecutions authorised by law.

I desire to express my indebtedness to Mr. Frederick Verinder for generously placing the results of his researches at my disposal, and also to Mr. A. E. Fenton for his kind help.

H. B. B.

March, 1912.

PENALTIES UPON OPINION

THE prosecutions for blasphemy which have taken place during the past three or four years (1908–1911) ought to make it perfectly clear that no laws can be said to be really obsolete until they have been definitely repealed. When Mr. Justice Stephen wrote his great book upon the *History of the Criminal Law*, thirty years ago, he opened his chapter upon "Offences Against Religion" in these words: "Offences against religion can hardly be treated as an actually existing head of our criminal law. Prosecutions for such offences are still theoretically possible in a few cases, but they have in practice become all but entirely obsolete."[1] Yet the sheets of this book were hardly dry from the printer's hands when a series of vindictive prosecutions for blasphemy took place. Again, after the lapse of a further quarter of a century, this so-called "obsolete" law was once more put into force. Mr. Atherley-Jones, K.C., in his able address to the jury in the Boulter case of 1908, took the ground that the law of blasphemy was obsolete because it was contrary to the spirit of the age; but to this Mr. Justice Phillimore replied that he and the jury were the humble ministers of the law, and were bound by their oaths to do justice according to the law; they had not to consider whether the law was an old law, or a good or a bad law. It is clear, therefore, that

[1] Vol. II., p. 396. Written in 1882.

while bad laws are unrepealed, more particularly laws relating to controversial matters of opinion, they can never be dismissed as obsolete; they may remain in abeyance for long periods, but at any moment the spirit of the age may temporarily relapse into barbarism, and in these laws the would-be persecutor finds a weapon ready to his hands.

Lord Justice Lindley, in delivering judgment in the case of the Attorney-General *v.* Bradlaugh, in December, 1884 (in an appeal by Mr. Bradlaugh for a new trial in the Government action against him in regard to the Parliamentary oath), said: "It is a mistake to suppose, and I think it as well the mistake should be known, that persons who do not believe in a Supreme Being are in the state in which it is now supposed they are. There are old Acts of Parliament still unrepealed by which such people can be cruelly persecuted. Whether that is a state of law which ought to remain or not is not for me to express an opinion upon; but, having regard to the fact that these Acts of Parliament still remain unrepealed, I do not see my way to hold judicially that this oath was not kept alive by Parliament for the very purpose, among others, of keeping such people out of Parliament." That is to say, that brutal laws which remain unrepealed may always be held judicially as having been deliberately kept alive for the very purpose of continuing to cruelly persecute the class of people against whom they were originally directed centuries before.

The circumstances of the cases of 1908 and 1911 make it not improbable that we may have other prosecutions for blasphemy. Success is only too likely to inflame the zeal of the persecutor. It is, therefore,

essential that lovers of liberty should take stock of their position and ascertain just where they stand. In one of those masterpieces of eloquence written during the American War of Independence, Paine points out that we are apt to forget the ground we have travelled over, and neglect to gather up our experiences; nevertheless, we may derive many advantages from halting a while, and taking a review of the wondrous complicated labyrinth of little more than yesterday.

If we "halt a while" and review the history of the so-called "offences against religion," or laws for the suppression of honesty, we feel the deepest scorn and shame and horror that such cruel intolerance could have been permitted and approved. At the same time, we are bound also to ask ourselves if in the years to come posterity will not feel the same shame and the same scorn of the generation of to-day, who claim intellectual enlightenment and profess a pride in religious liberty, but who suffer such laws to remain unrepealed, and to be used to satisfy the same malignant spirit of persecution, if with less fatal effect. Protestants and Nonconformists of every kind should be among the foremost and most strenuous in demanding the complete abolition of all penalties upon opinion: first, because it was against them, against all dissidents from the Roman Catholic faith, that these laws were originally directed; and, next, because they ought to know from their own experience that in the long run persecution, unless it is extermination, always tends to injure the cause of the persecutor and to exalt that of the martyr. Catholics, formerly the persecutors, became proscribed in their turn; and there are laws still unrepealed which might be used against them to-day.

If we ask, "What is the story of the laws against heresy in this country? When and how did this persecution of honest opinion begin?", we shall have to go back for more than five hundred years. In the days of the early English kings, when superstition was universal, heresy was practically an unknown offence. There were few in those days to speak against a Church whose authority was greater than that of kings. Dr. Stubbs[1] mentions the following early cases of medieval heresy in England: (1) The appearance of certain "pravi dogmatis disseminatores" in 1165 or 1166; they were "Publicani," and spoke German; they were condemned in a Council held at Oxford to be branded, flogged, and excommunicated, and were proscribed by the Assize of Clarendon. They quitted England after making one convert. (2) An Albigensian was burned in London in 1210. (3) In 1222 a deacon who had apostatised to Judaism was condemned in a Council at Oxford, and burned or hanged. (4) There were alarms about heresy in 1236 and 1240, and royal writs were issued restraining the action of unauthorised attempts at persecution. (5) There is a curious and obscure case—that of Richard Clapwell in 1286–8. He was excommunicated by the archbishop, made his way to Rome, was silenced there, and died mad. In the troubles of the Franciscans some of the unfortunate friars are said to have perished in England; but the authority for the statement is insufficient.

There were always isolated heretics, but their daring was punished in the spiritual courts; the heretic would be committed to prison by the writ

[1] *Constitutional History of England*, Vol. III., p. 365, *note*.

"de excommunicato capiendo" until he satisfied the demands of the Church. Directly, however, heresy began to spread, and groups or sects were formed for the purpose of propaganda, the position became changed; and, following the ferocious example set by the Christian Emperors[1] of Rome, there commenced in England that era of ruthless persecution which has not yet been brought to a close.

Wycliffe, 1378

It began in 1378 with the persecution of Wycliffe and the Lollards, at the instance of Gregory XI.; but the only punishment at the command of the bishops of that time was excommunication, which was sometimes difficult to enforce, and was considered not sufficiently severe. It was complained that there were "divers evil persons," who "expressly despise" the censures of the Church. In order to reach such

[1] "You will search in vain through the law of Rome for any traces of reform under Christianity; but there are two things of which you will get more than enough. You will get laws intended to aggrandise the priests, to shield them from civil and criminal responsibility, and to enable them to extort money with ease and hoard it with safety. You will also find many statutes passed to despoil of their property, to banish, and even to kill, all those sects of Christians who did not bow the knee to Rome, but were guilty of the crime of understanding the teaching of Christ differently from the Roman bishops. Few people are aware of the ruthless violence with which all dissent from the Church of Rome was stamped out. Before a century had passed under the Christian Emperors the catalogue of Rome's victims was to be reckoned by hundreds of thousands. In a statute passed in the year 428 against heretics we have a curious enumeration of sects, as regards some of whom even ecclesiastical antiquaries are silent. They were: Arians and Macedonians, Pneumatomachi and Apollinariani and Novatiani or Sabbatiani, Eunomiani, Tetraditæ, Valentiniani, Papianistæ, Montanists or Priscillianists, Marcianists, Borboriani, Messaliani, Eutychitæ or Enthusiastæ, Donatists, Audiani, Hydroparastatæ, Tascodrogitæ, Batrachitæ, Hermeiciani, Photiniani, Pauliani, Marcelliani, Ophitæ, Encratitæ, Apotactitæ, Saccophori, and, worst of all, the Manichæans and Nestorians. Here is a list of about thirty sects who were broken up and destroyed by the criminal law." (W. A. Hunter, LL.D., M.A., *The Past and Present of our Heresy Laws*, p. 8.)

persons, the clergy proceeded to a measure which Mr. Justice Stephen says is probably without parallel in the history of England.[1] They forged an Act of Parliament, to which the assent of the Lords and Commons was never expressed,[2] which enabled the bishops to order the arrest and imprisonment of heretics. The Commons repudiated this Act, and repealed it in the following Parliament; but the bishops contrived to suppress the Act of repeal. "A brisk series of prosecutions" is said to have followed; but the power of arrest and imprisonment which the Act bestowed on the Ecclesiastical Courts was insufficient to satisfy religious rancour, and in the year 1400 still wider powers were obtained from the new king, Henry IV., who had purchased the support of the nobles by a promise to reverse the peace policy of his predecessor, and the support of the clergy by the even more terrible promise of persecution.[3] Arundel, Archbishop of Canterbury, called together the clergy on January 26, with the object of devising measures to put down the Lollards. This resulted in a bitter petition, which was granted by the king with the assent of the Lords, and which took final shape in that infamous statute *de hæretico comburendo*. This statute gave power to the bishops, at their mere will and pleasure, to arrest and imprison so long as their heresy should last all preachers of heresy, all schoolmasters infected with heresy, and all owners and writers of heretical books. On a refusal to abjure or a relapse after abjuration, the heretic could "be handed over to the civil officers, to be taken to a high

Statute of Heretics, 1400

[1] *History of Criminal Law*, Vol. II., p. 443.
[2] Hallam's *Europe during the Middle Ages*, p. 570.
[3] Green's *Short History of the English People*, p. 255.

place before the people and there to be burnt, so that their punishment might strike fear into the minds of others."[1] This statute, founded upon a petition of the clergy, was enacted with the consent of the Lords alone, without any mention of the Commons.[2] The earliest and most ferocious laws against heretics in this country were therefore the handiwork of the Lords Spiritual and Temporal, and were obtained by fraud or by a direct infringement of the rights of the Commons. Indeed, the bishops were in so great a hurry that they could not even wait for the formal assent of the Lords, but actually induced the king to issue a writ for the burning of William Sawtre eight days before the passing of the Act. Sawtre was a clerk who had quitted a Norfolk rectory to preach the new doctrines of Wycliffe. In April, 1399, he was convicted of heresy by his bishop, and put to penance; and on February 12, 1400, he was cited before the Archbishop of Canterbury as a relapsed heretic, and convicted. His principal heresy was apparently a refusal to accept the doctrine of transubstantiation.[3] He was actually burned on March 2, although the Act which gave the clergy power to inflict this punishment was not passed until March 10.

William Sawtre, 1400

John Badby, a tailor of Worcester, was excommunicated for heresy by his bishop, and refused to abjure. He was brought before the archbishop and clergy in convocation, and, persisting in his heresy, was handed over to the secular arm with a petition that he might not be put to death. Stubbs suggests

John Badby, 1410

[1] Taswell-Langmead, *English Constitutional History*, p. 410.

[2] Hallam, p. 510.

[3] Sawtre, interrogated by the Archbishop, did not so much deny the transubstantiation of the bread upon the altar into the very body of Christ as refuse to affirm it.

that the petition may have been "a piece of mockery"; in any case, the unfortunate man was burned in the presence of the Prince of Wales. The groans of the sufferer were taken for a recantation, and the Prince ordered the fire to be plucked away; but the offer of life and a pension failed to weaken the courage of the half-burned martyr, so he was thrust back again into the flames.[1]

Henry V., 1414

The powers of the clergy under the law were still further extended in 1414 under Henry V., and these Acts gave them "a wild and unbounded jurisdiction" over heretics, inasmuch as they contained no definition of heresy, and permitted the ordinary to at once deliver over to the sheriff to be burnt any person whom he found guilty of heresy. The Statute of Heretics was only finally abolished in 1677, under Charles II., after an unknown but certainly very large number of men and women had, by means of it, been burned to death or otherwise punished for their heresy—that is to say, for their honesty: they suffered because they were honest enough to avow their opinions. Dr. Stubbs says that it is difficult to form any distinct notion of the way in which the statutes against the Lollards operated on the general mass of the people; they were irregularly enforced, and the number of executions which took place under them has been very variously estimated. He mentions the number, 23,000, given by Adam of Usk, but says that this does not refer to executions. He quotes the London chroniclers for a number of executions which took place under Henry V. and Henry VI.: thirty-eight persons were hanged and

[1] Stubbs, Vol. III., p. 373. Green, p. 259.

burned in 1414; in 1415 John Claydon and Richard Turmyn were burned; in 1417 Oldcastle; in 1422 William Taylor, priest; in 1430 Richard Hunden; in 1431 Thomas Bagley was burned and Jack Sharp and five others were hanged; in 1438 John Gardiner was burned; in 1440 Richard Wych and his servant; in 1466 William Barlowe; in 1467 four persons were hanged for sacrilege. Foxe adds other names to this list.[1]

Executions under Hy. V. and Henry VI.

Edwd. IV.

Stephen, quoting from Foxe's *Acts and Memorials*, says that between 1428 and 1431—that is to say, in three years—a hundred and twenty persons were examined and "sustained great vexation" for their religious opinions in Beccles and other small places in Norfolk and Suffolk; several of them were burnt. In 1491 Joan Boughton was burnt at Smithfield, and several other persons in 1498 and 1499. About the year 1506 two persons were burnt, and many others put to penance at Amersham.[2]

Hy. VII.

Sometimes the offence for which heretics suffered was of the most trifling kind. A man named Keyser was imprisoned for saying that, although he had been excommunicated by the Archbishop of Canterbury, "he was not excommunicated before God, for his corn yielded as well as any of his neighbours." And another, Warner, was imprisoned for daring to say "he was not bound to pay tithes to the curate of the parish where he dwelt."[3] Lord Commissioner Whitelocke, in giving judgment in the case of Naylor a century and a half later, referred to Warner's case, saying that at that time denying that tithes were due

Thomas Keyser

Warner

[1] Stubbs, Vol. III., p. 377.
[2] Stephen, Vol. II., p. 451.
[3] *Ibid.*

to the parson "was a very great heresy, but now [1655] I believe some are inclinable to think that to say 'tithes are due to the parson' is a kind of heresy. So, in this (Naylor's) case, that which may now be accounted blasphemy, and the offender put to death for it, in another age the contrary may be esteemed blasphemy, and the offender likewise put to death for that."[1] But, "whatever might or might not be heresy," says Stephen, "it was clearly heresy to deny the miraculous change in the elements at the celebration of Mass. Other points.....were subjects of furious controversy";[2] but upon this those in power seemed to hold no difference of opinion. It was for this dreadful heresy that John Lambert was tried before Henry VIII. in person in 1538, and was burned the day after his trial.

John Lambert, 1538

Hy. VIII.

Henry VIII. was, as we know, a truly Christian king, and under his reign punishment for heresy became even more common than before. The fame of his piety is preserved to our own day in the title of Defender of the Faith, which was bestowed upon him by the Pope, and which Papal honour has been continuously worn by the successive kings of England down to our present Protestant monarch George V.

The criminal records of Scotland and the accounts of the Lord High Treasurer also show a number of cases of the punishment of heretics at this period. James V. himself is said to have been present at the burning of four persons on Castle Hill on March 1, 1539. An original letter from the Duke of Norfolk to Lord Cromwell, preserved in the British Museum, dated

[1] Bradlaugh (quoting Cobbett's *State Trials*, Vol. V.), *The Laws Relating to Blasphemy and Heresy*, p. 11.
[2] Stephen, Vol. II., p. 456.

Berwick, March 29, 1539, complains of the bigotry of James V., saying: "Dayly commeth unto me some gentlemen and some clerks, wich do flee out of Scotland, as they said, for redynge of Scriptures in Englishe, saing that if they were taken, they sholde be put to execution. I give them gentle words; and to some money."

New laws against heresy were enacted by Henry VIII.; but these, with many others, were repealed by Edward VI., who left the law as it stood after the passing of the Statute of Henry IV.'s reign, which authorised the burning of heretics. In spite, however, of extortionate fines, in spite of prison and the stake, heresy—the outward and visible sign of the strivings of human reason—continued to make its way. And as heresy spread, so the punishments of heretics multiplied.

Edwd. VI.

Edward VI. made it a misdemeanour to deprave, despise, or condemn the Sacrament of the Lord's Supper, by using concerning it words of depraving, reviling, or despising; and by a later Act it was made an offence to say anything in derogation of the Book of Common Prayer; or to procure anyone to do so; or to interrupt any minister in any church in singing or saying common or open prayer, or in ministering the Sacrament. For the first offence the penalty is a fine of 100 marks, or six months' imprisonment; for the second offence, 400 marks or twelve months' imprisonment; for the third, forfeiture of all the delinquent's goods and chattels and imprisonment for life. These laws are in force to-day: they have never been repealed. It may be said that does not matter; they are obsolete. But who can be certain that they are obsolete? Who is

The Lord's Supper

Book of Common Prayer

to say that if some pious Commissioner of Police chose to take proceedings under these Acts against, say, some too zealous followers of Kensit, he would not find a judge and jury of the Central Criminal Courts, or of some provincial Assize, who, as "humble ministers of the law," would hold it their duty to administer the law; and not to criticise, amend, or ignore it?

Right through the next hundred years religious fervour ran high, and there was a continuous persecution of heretics. As one religious party was now in the ascendant and now another, laws against heresy superseded one another in bewildering succession. The orthodoxy of one reign was the heresy of the next, and few could feel themselves permanently secure. There was, however, one sect whom all combined to treat as heretics: that is the Anabaptists, or Arians, those whom we to-day should call Unitarians.

Bartholomew Legate, 1611

Such a one was Bartholomew Legate, described by Fuller in his *Church History* as a native of Essex, of "person comely, complexion black, age about forty years; of a bold spirit, confident carriage, fluent tongue, excellently skilled in the Scriptures; and well had it been for him if he had known them less or understood them better; whose ignorance abused the Word of God, therewith to oppose God the Word. His conversation (for aught I can learn to the contrary) very unblameable. And the poison of heretical doctrine is never more dangerous than when served up in clean cups and washed dishes.

"King James caused this Legate to be brought to him, and seriously dealt with him, in order to endeavour his conversion. One time the King had a

design to surprise him into a confession of Christ's Deity (as His Majesty afterwards declared to a right reverend Prelate) by asking him: *Whether or no he did not daily pray to Jesus Christ?* Which had he acknowledged, the King would infallibly have inferred that Legate tacitly consented to Christ's Divinity, as *a searcher of the hearts.* But herein His Majesty failed of his expectation, Legate returning: *That, indeed, he had prayed to Christ in the days of his ignorance, but not for these last seven years.* Hereupon the King, in choler, spurned at him with his foot: *Away, base Fellow* (saith he); *it shall never be said that one stayeth in my presence that hath never prayed to our Saviour for seven years together*.....Before we set down his pestilent Opinions, may Writer and Reader fence themselves with prayer to God against the infection thereof; lest, otherwise, *touching such pitch* (though but with the bare mention) *defile us*, casually tempting a temptation in us, and awaking some corruption which otherwise would sleep silently in our souls.....His damnable tenets were as follows :—

"1. That the Creed called the Nicene Creed, and Athanasian Creed, contain not a profession of the true Christian Faith.

"2. That Christ is not God of God begotten, not made; but begotten and made.

"3. That there are no persons in the Godhead.

"4. That Christ was not God from everlasting, but began to be God when he took flesh of the Virgin Mary.

"5. That the world was not made by Christ.

"6. That the Apostles teach Christ to be Man only.

"7. That there is no generation in God, but of creatures.

"8. That this assertion, God to be made Man, is contrary to the rule of faith, and monstrous blasphemy.

"9. That Christ was not before the fullness of time, except by promise.

"10. That Christ was not God, otherwise than an anointed God.

"11. That Christ was not in the form of God equal with God—that is, in substance of God—but in righteousness and giving salvation.

"12. That Christ by his Godhead wrought no miracle.

"13. That Christ is not to be prayed unto."

For maintaining these opinions Legate was long in prison in Newgate. At length John King, Bishop of London, summoned him to the Consistory of St. Paul's, and summoned also so many bishops, divines, and lawyers to assist him that, says Fuller, it "seemed not so much a large Court as a little Convocation." By the counsel and consent of these, the Bishop declared Bartholomew Legate to be "an obdurate, contumacious, and incorrigible heretic.....Whereupon King James, with his letters dated March 11 under the Privy Seal, gave order to the Broad Seal to direct the writ *de hæretico comburendo* to the Sheriff of London for the burning of the aforesaid Legate.....

March 18 To Smithfield he was brought to be burned.....[and] refusing all mercy, he was burned to ashes."[1]

Legate is usually spoken of as the last person who was burned for heresy in London; but a month after

[1] Thomas Fuller, *The Chucrh History of Britain*, Bk. X., p. 62 (ed. 1655).

his execution Edward Wightman, of Burton-on-Trent, was convicted before Richard Neile, Bishop of Coventry and Lichfield, and burned at Lichfield for—to quote Fuller once more—"far worse opinions (if worse might be) than Legate maintained. Mary Magdalene was once possessed with seven devils, but ten several heresies were laid to Wightman's charge—namely, those of Ebion, Corinthus, Valentinian, Arrius, Macedonius, Simon Magus, Manes, Manichæus, Photinus, and of the Anabaptists. Lord! what are we when God leaves us?" Edward Wightman, April 11, 1611

Fuller says that God seemed so well pleased with this seasonable severity that none ever after dared to avow their heresy, except a Spanish Arrian, who was condemned to die, but was allowed to linger out his life in Newgate. "Indeed," he adds, "such burning of heretics much startled common people, pitying all in pain, and prone to asperse *justice* itself with *cruelty*, because of the novelty and hideousness of this punishment.....such being unable to distinguish between *constancy* and *obstinacy*, were ready to entertain good thoughts even of the opinions of those heretics who sealed them so manfully with their blood. Wherefore King James politickly preferred that heretics hereafter, though condemned, should silently and privately waste themselves away in prison, rather than to grace them and amuse others with the solemnity of a public execution, which, in popular judgments, usurped the honour of a persecution."[1]

Among those who suffered for conscience' sake was John Biddle, the founder of English Unitarianism. John Biddle, 1647

[1] *Ibid.*, p. 64.

He was an M.A. of Oxford and master of the Gloucester Grammar School, but lost his situation in consequence of his denial of the Trinity. He wrote a book which was publicly burnt by the hangman on September 6, 1647, and he himself was imprisoned. On his release in 1652 he published some other pamphlets, and in 1654 he was again imprisoned. In the following year he was banished under the Commonwealth; but, returning to London, he was again imprisoned under Charles II., and died in gaol in September, 1662.

Commonwealth

George Fox, the Quaker, also suffered imprisonment in 1656 with, it is said, about a thousand of his followers.

George Fox, 1656

It was during the Commonwealth that there occurred the remarkable case of James Naylor. Naylor was at one time an officer under Cromwell; he is usually spoken of as a Quaker, but would be more correctly described as a religious madman. He was charged with having made his entry into Bristol in imitation of the entry of Christ into Jerusalem, His case was brought before the House of Commons, which, in this and in certain other cases of that period, seems to have assumed the functions of the Star Chamber. On the question being put to the vote, eighty-two voted for Naylor's execution and ninety-six against. The sentence as finally carried out was even more brutal than death. This unfortunate man for—what shall we say?—"an offence against good taste" was sentenced to be whipped from Westminster to the Old Exchange, to be pilloried, to have his tongue bored with a hot iron, to be branded in the forehead, and afterwards kept in prison at hard labour indefinitely. Apart from the cruel malignity of the sentence, this case is

James Naylor, 1656

noteworthy in that the Lord Commissioner Whitelocke, in giving judgment, particularly discriminated between blasphemy and heresy. He said: "I think it not improper first to consider the signification of the word 'blasphemy,' and what it comprehends in the extensiveness of it; and I take it to comprehend the reviling or cursing the name of God or of our neighbour." He further said: "They are offences of a different nature: heresy is *Crimen Judicii*, an erroneous opinion; blasphemy is *Crimen Malitiæ*, a reviling the name and honour of God."[1] Whitelocke, L. Com.

Early in the reign of Charles II. we have the case of Benjamin Keach, of Winslow in Buckinghamshire, who wrote a tract entitled *The Child's Instructor; or, A New and Easy Primmer*, in which it was maintained that infants ought not to be baptised; that laymen may preach the Gospel; that Christ shall reign permanently upon the earth, etc. He was indicted in October, 1664, for "maliciously writing and publishing a seditious and venomous book, wherein are contained damnable positions contrary to the Book of Common Prayer." He was tried at the Aylesbury Assizes before Lord Chief Justice Hyde, whose conduct upon the bench is said to have been cruel, brutal, and "in every respect disgraceful." Keach was convicted, and sentenced to a fortnight's imprisonment; to stand upon the pillory at Aylesbury for the space of two hours, and for the same period in the market of Winslow, while his book was burned before his face by the common hangman; to pay a fine of £20, and to remain in Charles II. Benjamin Keach, 1665 Hyde, L.C.J.

[1] *5 State Trials*, 825, as quoted by C. Bradlaugh in *The Laws Relating to Blasphemy and Heresy*, pp. 11 and 12.

gaol until he found sureties for good behaviour and for his appearance at the next assize to renounce his doctrine and make public submission. Keach was never brought to make recantation. Stephen speaks of this case as one which has been little noticed, but which, if it had been treated as a precedent, would have been of momentous importance. There is nothing to show whether the indictment was under common law or the statute.[1]

After the Restoration, however, not only was there more general laxity, but so many changes had taken place during the preceding years that the law as to heresy had become extremely obscure. In October, 1666, an attempt was made to revive the common law writ *de*
Hobbes 1666 *hæretico comburendo* against Hobbes, on account of his *Leviathan*. Happily, this failed, and a few years later (in
1677 1677) the writ itself was definitely and finally abolished, and with it all punishment of death in pursuance of ecclesiastical censures. The repealing Act, however, contains the specific proviso that "Nothing in this Act shall extend, or be construed to take away or abridge, the jurisdiction of Protestant Archbishops or Bishops, or any other judges of Ecclesiastical Courts, in cases of atheism, blasphemy, heresy, or schism, or other damnable doctrines and opinions."[2]

Under this provision, the Ecclesiastical Courts to this day possess the power of ordering imprisonment for heresy for a term not exceeding six months; and Dr. Hunter says that the Ecclesiastical Courts actually exercised their powers so late as 1842 and 1845.[3]

[1] Stephen, Vol. I., p. 375; 3 Cobbett's *State Trials*, 701.
[2] Bradlaugh, pp. 12 and 13; Stephen, Vol. II., p. 468.
[3] Hunter, *Heresy Laws*, p. 10.

The last of the statute laws against blasphemy, also still in force, is the statute of William III., described by Lord Chief Justice Coleridge as a "ferocious" and "inhuman" Act. It runs as follows:— Wm. III.

"*9 William III., c. 32.*

"*An Act for the more effectual suppressing of blasphemy and profaneness.*

"Whereas many persons have of late years openly avowed and published many blasphemous and impious opinions contrary to the doctrine and principles of the Christian religion, greatly tending to the dishonour of Almighty God, and may prove destructive to the peace and welfare of this kingdom: Wherefore, for the more effectual suppressing of the said detestable crimes, be it enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and the Commons in this present Parliament assembled, and by the authority of the same, that if any person or persons having been educated in, or at any time having made any profession of, the Christian religion within this realm shall, by writing, printing, teaching, or advised speaking [deny any one of the persons in the Holy Trinity to be God[1]], or shall assert or maintain there are more gods than one, or shall deny the Christian religion to be true, or the Holy Scriptures of the Old and New Testament to be of divine authority, and shall, upon indictment or information in any of His Majesty's Courts of Westminster, or at the Assizes, be thereof lawfully convicted by the oath of two or more credible witnesses, such person or persons for the first offence

[1] Repealed 53 Geo. III., c. 160.

shall be adjudged incapable and disabled in law to all intents and purposes whatsoever, to have or enjoy any office or offices, employment or employments, ecclesiastical, civil, or military, or any part in them, or any profit or advantage appertaining to them. And if any person or persons so convicted, as aforesaid, shall at the time of his or their conviction enjoy or possess any office, place, or employment, such office, place, or employment shall be void, and is hereby declared void. And if such person or persons shall be a second time lawfully convicted, as aforesaid, of all or any the aforesaid crime or crimes, that then he or they shall from thenceforth be disabled to sue, prosecute, plead, or use any action or information in any court of law or equity, or to be the guardian of any child, or executor or administrator of any person, or capable of any legacy or deed of gift, or to bear any office, civil or military, or benefice ecclesiastical, for ever within this realm, and shall also suffer imprisonment for the space of three years, without bail or mainprize from the time of such conviction.

"Provided always, and be it enacted by the authority aforesaid, that no person shall be prosecuted by virtue of this Act for any words spoken, unless the information of such words shall be given upon oath before one or more justice or justices of the peace within four days after such words spoken, and the prosecution of such offence be within three months after such information.

"Provided also, and be it enacted by the authority aforesaid, that any person or persons convicted of all, or any, of the aforesaid crime or crimes in manner aforesaid, shall for the first offence (upon his, or her, or their acknowledgment and renunciation of such

offence or erroneous opinions, in the same court where such person or persons was or were convicted, as aforesaid, within the space of four months after his, her, or their conviction) be discharged from all penalties and disabilities incurred by such conviction, anything in this Act contained to the contrary thereof in anywise notwithstanding."

What we know of the history of this Act is not without interest. It originated in an address to the King calling upon him to suppress pernicious books and pamphlets leading to the subversion of the Christian religion. William was so pleased with this address that he immediately published a proclamation "for preventing and punishing immorality and profaneness." This, apparently, is the original of the proclamation read to-day at the opening of every Commission of Assize or Quarter Session in England, which, among other things, vainly forbids the playing of cards on Sundays.[1] According to the Commons Journals, quoted by Mr. Justice Stephen in his book, the Bill was sent down by the Lords to the Commons, and afterwards amended by the Lords in such a way that, but for the refusal of the Commons to accept the amendments, it would have applied to the Jews. A conference of the two Houses was held to discuss this point, which resulted in the insertion of the words restricting the scope of the Bill to persons educated as Christians or having at any time made profession of Christianity. This, although it incidentally, and accidentally, protects the small number of persons educated as Atheists and never having made profession

[1] Stephen, Vol. II., p. 469.

of Christianity, was a compromise designed to protect the Jews, who, by their wealth and international connections, had become persons of consideration and importance in the kingdom, but whom the House of Lords had been quite willing to proscribe.

Whether any proceedings have ever been taken under the Act it is impossible to say, but there appears to be no record of any. It has, however, never been repealed, and Mr. Bradlaugh's attempt to get it repealed in 1889 was rejected by a large majority. The apathy of the "lovers of religious liberty" has been such that for two hundred years they have permitted the Act to hang like a sword of Damocles over the head of any heretic who has seceded from the Christian faith. The clause referring to the denial of the Trinity—once the heresy of heresies—was repealed by 53 Geo. III.; but the repeal of one particular clause, leaving the rest untouched, may to some extent be taken as confirming and strengthening the rest. As to the repealing Act of George III., Mr. Bradlaugh noted, in 1878, that it was then treated as a spent Act, and no longer appeared in the revised statute-book; it was therefore uncertain how far Unitarians were again liable to indictment.[1] And although there is no record showing that the Act of William III. has ever been enforced, it has nevertheless always been treated as a living Act. It has constantly been cited as authoritative by judges, and has undoubtedly influenced them very considerably in their decisions in blasphemy and other cases in which heretics were concerned.

Geo. III. Provisions were made by the statute of 60 Geo. III. and 1 Geo. IV. for securing the payment of fines

[1] Bradlaugh, *Laws Relating to Blasphemy*, p. 9.

inflicted for the publication of blasphemous libels in newspapers and pamphlets. The last prosecution under this law was against Charles Bradlaugh for publishing the *National Reformer*. This led to the repeal of the statute in 1869.

Geo. IV.

An Act of 6 Geo. IV. extended the English blasphemy laws to Scotland; and this statute, with the exception of certain provisions as to banishment, still remains in force.

Before tracing out the history of the judge-made law as to blasphemy, I may here mention a curious case which reveals the depths of meanness to which malignant bigotry will sometimes make people condescend. In the year 1748 the Corporation of London made a bye-law imposing a fine of £400 upon every person who, being nominated as Sheriff by the Lord Mayor, declined standing the election of the Common Hall, and £600 upon everyone who, being elected, refused to serve the office, which fines were to be appropriated to the cost of building the Mansion House. The Corporation then proceeded to nominate and elect to office Dissenters, who were incapable of serving by an Act of 13 Chas. II., which provided that no person should be elected into any Corporation offices who had not taken the sacrament in the Church of England within a year preceding the election. Several Dissenters, of whom one was blind and another bedridden, were elected as Sheriffs, and paid fines to the amount of upwards of £15,000. At length Evans and others refused to pay, urging that they could not be obliged by law to pay a fine for not serving an office to which by law they were ineligible. The City brought actions against them in the Sheriffs' Court—

Chamberlain of London *v.* Evans

a court of their own—and in 1757 judgment was given in favour of the Corporation. Evans then took his case before the Court of Hustings, another City Court; and the previous judgment was there affirmed by the Recorder in 1759. Evans next, by writ of error, carried his cause before the Court of Judges delegate, called the Court of St. Martin's. The judges were Lord Chief Justice Willes (who died while the case was proceeding), Lord Chief Baron Parker, Mr. Justice Foster, Mr. Justice Bathurst, and Mr. Justice Wilmot. These, in 1762, unanimously reversed the judgment of the Sheriffs' Court and the Court of Hustings. The Corporation then, by writ of error, brought the case before the House of Lords; and in 1767, ten years after the first judgment given in the case, all the judges who had not sat as delegates gave their opinions on the question put to them, which, with one exception, were entirely in favour of Evans and against the Corporation. After the judges had spoken, Lord Mansfield, in his place as a peer, made his famous speech for toleration, which, however, did not seem to include "Atheists and Infidels," whom Lord Mansfield dismissed from consideration as not coming within the Toleration Act.

The law which has affected us most during the past two hundred years is not the statute law, but the common or judge-made law as to blasphemy. The particular form in which it has been handed down to us dates back to 1676, when a man named Tayler was prosecuted in the King's Bench before Sir Matthew Hale. The unhappy man Tayler was brought from Bedlam to plead to the indictment, and was charged with having used words which only

Tayler, 1676

a madman could have used, but for which he was solemnly tried before the Lord Chief Justice of England. He was charged with having said that Jesus Christ was a bastard and a whore-master; religion was a cheat; that he was a king's son, and his father had sent him as a fisherman to take vipers; that he was Christ's younger brother and an angel of God; and that he feared neither God, devil, nor man. Sir Matthew Hale held "that such kind of wicked and blasphemous words were not only an offence against God and religion, but a crime against the laws, State, and Government,[1] and therefore punishable in this [King's Bench] Court; that to say religion is a cheat is to dissolve all those obligations whereby civil societies are preserved; and Christianity being parcel of the laws of England, therefore to reproach the Christian religion is to speak in subversion of the law." The attitude of Sir Matthew Hale's mind in regard to persons dissenting from the Scriptures may be gathered from the fact that he explicitly founded his belief in witchcraft upon Scriptural authority, and condemned some poor old women to be hanged as witches. But while we may easily understand and pardon such credulity in a judge of the seventeenth century—even in a judge with a high reputation for enlightenment — later judges have not the same excuse; and the very men who could deride Hale's belief in witchcraft could yet blindly follow his judgment as to blasphemy, for Hale's judgment has been followed and his words slavishly adopted

Hale, L.C.J.

[1] Part of Tayler's punishment was to stand in the pillory wearing a paper with the inscription: "For blasphemous words tending to the subversion of all government." He was also ordered to pay 1,000 marks fine, and to find sureties for good behaviour during life.

by Lord Chief Justice after Lord Chief Justice for two hundred years, right down to the time of Lord Chief Justice Coleridge's judgment in 1883. Dr. Hunter remarks that Sir Matthew Hale's observation that Christianity is parcel of the law of England introduced a legal conundrum of which successive generations of lawyers have in vain tried to find the meaning.[1] Another modern lawyer, commenting on Hale's dictum, says it is impossible to say what it means; but probably Sir Matthew Hale "picked up somehow or other an expression which had a religious sound, and meant nothing very definite to his own mind."[2] And this is the legal view of a judgment which has been quoted over and over again as authorising the imprisonment of men for blasphemy!

Although Hale has always been held responsible for this phrase, he seems to have "picked up" the idea from his predecessors, for we find it laid down in the time of Elizabeth :—

"Si home dit que les leyes de Royne ne fueront *God's Lawes* uncore nul indictment gist pur ceux parolls, car ceo est voier que ils ne sont les leyes de dieu. 41 Eliz. B.R. adjudge. Mes autrement ust estre sil ust dit que les leyes del Royne ne sont agreeable al leyes de Dieu."[3]

At the trial of Lieut.-Colonel John Lilburne at the Guildhall of London, on October 24, 1649, for high
Jermin, J. treason, Judge Jermin, addressing Mr. Lilburne,

[1] Hunter, *Past and Present of the Blasphemy Laws*, p. 11.
[2] *The Law of Blasphemy*, by L. M. Aspland, M.A., LL.D., etc., 1884, p. 7.
[3] 2 Roll's Abridgment, 78. "If anyone were to say that the Queen's laws were not God's laws, no indictment would lie for these words, since it is evident that they are not the laws of God. But it would be otherwise if he had said that the laws of the Queen are not in keeping with the laws of God."

said: "You have desired to have the right of the law of England; and yet you do question a fundamental thing, that hath been always used in case of criminal offences. By the law of England, that you desire to have the meaning of it, is but just; but you must know that the law of England is the law of God; and if there be anything in the law of England but what was by admirable constitution and reason, we would not meddle with it."

At the same trial Lord Keble remarked: "You say well; the law of God is the law of England, and you have heard no law else but what is consonant to the law of reason, which is the best law of God; there is none else urged against you."[1] Keble, L.P.

In 1657, at the trial of Christopher Love, before the High Court, for high treason, the Lord President Keble said: "……for there is no law in England but is as really and truly the law of God as any Scripture phrase that is by consequence from the very texts of Scripture; so is the law of England the very consequence of the Decalogue itself; and whatsoever is not consonant to Scripture in the law of England is not the law of England, the very books and learning of the law; whatsoever is not consonant to the law of God in Scripture, or to right reason which is maintained by Scripture; whatsoever it is in England, be it Acts of Parliament, customs, or any judicial Acts of the Court, it is not the law of England, but the error of the party which did pronounce it; and you or any man else at bar may so plead it. And therefore to profess that you are so knowing in the laws of God, and yet to be ignorant

[1] *4 State Trials*, 1269.

of the laws of England, when yet the laws of England be so purely the laws of God, as no law in the world more practical at this day—for you to be ignorant of them is not your commendation, nor to any of your profession.....But this is law too, by the law of this land, which is the law of God: for we have no law practised in this land but is the law of God..... all the laws of this nation are Christian, and stand with evangelical truth, as well as with natural reason, and they are founded upon it."[1]

These quotations show clearly that Lord Hale "picked up" his expression from the *dicta* of earlier judges, and that Lord President Keble at least had something exceedingly definite in his mind.

Thomas Woolston, 1728

The next recorded case of importance is fifty years later, that of Thomas Woolston, a man of learning and piety, a Fellow of Sydney Sussex College, and a minister of the Church. He became a deist, and published various works urging the allegorical interpretation of the Scriptures. In 1726 he published *Six Discourses on the Miracles*, in which he held up the miracles to ridicule. One critic describes these as being written in "forcible, homely language"; another as "buffoonery" and "strange, unseemly fooling." It is said that 30,000 copies of this work were sold, and sixty pamphlets were written in reply. Woolston was tried for blasphemy in 1728, and pleaded in his defence that his intent was to show that the miracles were not to be taken in a literal but in an allegorical sense. L. C. J. Raymond, in delivering jugment, said: "Christianity in general

Raymond, L.C.J.

[1] *5 State Trials*, 43.

is parcel of the common law of England, and therefore to be protected by it.....I would have it taken notice of that we do not meddle with any differences in opinion, and that we interfere only when the very root of Christianity is struck at." Mr. Justice Stephen points out that this judgment is remarkable on account of the emphatic way in which it makes the matter and not the manner of the publication the gist of the offence.[1] In March, 1729, Woolston was sentenced to a year's imprisonment and a fine of £100, "and then to continue in prison for life unless he himself should be bound in a recognisance for £2,000, and two others for £1,000 each, or four for £500 each, with condition for his good behaviour during life." He was kept in prison until he died in 1733.

Da Costa *v.* De Paz, 1745

Elias de Paz, a Jew, had by his will bequeathed £1,200 to be invested for the maintenance of a jesuba, or assembly for the purpose of reading the Jewish law and instructing in the Jewish religion. Lord Hardwicke held that "the intent of the bequest was in contradiction to the Christian religion, which is part of the law of the land, which is so laid down by Lord Hale and Lord Raymond, and it undoubtedly is so." The bequest being declared illegal, it was not allowed to revert to the heir-at-law, but £1,000 of it was given to the Foundling Hospital.[2]

Ld. Hardwicke, Chancellor

Jacob Ilive, 1756

In 1756 Jacob Ilive, a printer and letter-founder, was prosecuted for blasphemy on account of a work entitled *Some Modest Remarks on the late Bishop*

[1] Stephen, Vol. II., p. 471.

[2] Swanston, and others.

Sherlock's Sermons. This was described in the information filed against him by the Attorney-General (afterwards Lord Camden) as "a profane and blasphemous libel, tending to vilify and subvert the Christian religion, and to blaspheme our most Blessed Lord and Saviour Jesus Christ; to cause his divinity to be denied, to represent him as an impostor; to scandalise, ridicule, and bring in contempt his most holy life, doctrines, and miracles; and to cause the truth of the Christian religion to be disbelieved and totally rejected, by representing the same as spurious, fictitious, and chimerical, and a gross piece of forgery and priestcraft." Ilive was sentenced to be committed to Newgate for one month, and within that month to be set upon the pillory at Charing Cross, at the Royal Exchange, and at the end of Chancery Lane, near Temple Bar. That then he should be committed to the House of Correction at Clerkenwell, and kept to hard labour for the space of three years; at the expiration of which he should give security for his good behaviour during life, himself in the sum of £100 and two sufficient sureties in £50 each. Ilive utilised his experience in prison to write an exposure of the bad condition of the prisons, and to suggest methods of reform.

Peter Annet, 1763

A few years later, in 1763, proceedings were taken by the Attorney-General against Peter Annet, a schoolmaster and a deist, who had written a number of controversial works on religion, and was tried "for a certain malignant, profane, and blasphemous libel entitled *The Free Inquirer*"—of which he had issued nine numbers—"tending to blaspheme Almighty God, and to ridicule, traduce, and discredit

his Holy Scriptures, particularly the Pentateuch, and to represent and cause it to be believed that the prophet Moses was an impostor, and that the sacred truths and miracles recorded in the Pentateuch were impostures and false inventions, and thereby to diffuse and propagate irreligious and diabolical opinions in the minds of His Majesty's subjects, and to shake the foundations of the Christian religion, and of the civil and ecclesiastical government established in this kingdom." In consideration "of his poverty, of having confessed his errors, of his being seventy years old, and of some symptoms of wildness that appeared on his inspection in court, the Court declared they had mitigated their intended sentence" to one month's imprisonment in Newgate; to stand twice in the pillory, once at Charing Cross and once at the Royal Exchange, with a paper on his forehead inscribed "Blasphemy," and then to be confined in Bridewell Goal and kept to hard labour for one year, and to find security for his good behaviour for the rest of his life. He died in 1769.[1]

The next case, although still in the eighteenth century, brings us almost in touch with our own times, inasmuch as the prosecution was for the sale of Paine's *Age of Reason*, a book of which millions of copies have been sold in edition after edition, and which still has a steady sale at the present day. In June, 1797, a poor bookseller named Williams was tried before Lord Kenyon for selling a copy—and, so

Thomas Williams, 1797

[1] It is related of Annet that, on being asked his views on a future life, he answered: "One of my friends in Italy, seeing the sign of an inn, asked if that was an angel. No, was the reply, do you not see it is the sign of a dragon? Ah, said my friend, as I have never seen either angel or dragon, how can I tell whether it is one or the other?"

far as I can learn, a single copy only—of the Second Part of the *Age of Reason*.

Kenyon, L.C.J.

Lord Kenyon, in summing up against Williams, repeated Hale's formula, that "the Christian religion is part of the law of the land"; and "his summing-up implies, though it does not positively and directly state, that every attack on Christianity must, as such, be illegal."[1] The jury instantly found a verdict of guilty. The prosecution against Williams was undertaken by a society which liked to call itself the "Proclamation Society," but which has been called by its enemies the "Vice Society." Its full title was too long for everyday use; it was "The Society to Enforce His Majesty's Proclamation for the Suppression of Vice." Lord Kenyon was good enough to give the Society a certificate of character from the Bench: he declared that it was composed of "clergymen and laymen of the most respectable character in the kingdom." Among the respectable clergymen were: the Rev. Dr. Porteous, Bishop of London, to whom we owe the Sunday Act of Geo. III., which forbids meetings on Sunday to which admission is obtained by payment; and the Bishops of Durham and St. Asaph 's. Among the laymen, and one of the most active of the vice-presidents, was Mr. Wilberforce. The name of William Wilberforce has been handed down in honour during the past hundred years for his unwearied endeavours to procure the emancipation of the slave; but he who was so full of sympathy for the persecuted black man was himself a ruthless persecutor of his heretical fellow-countrymen. The counsel employed by the Society against Williams was that

[1] Stephen, Vol. II., p. 473.

same Thomas Erskine (afterwards Lord Chancellor) who five years earlier had so brilliantly defended Paine's *political* heresy, *The Rights of Man*. After the jury had given their verdict against Williams, judgment was postponed; and while Williams lay in prison awaiting sentence, Erskine learned that his poor wife and little children were literally starving, in the absence of their breadwinner. At a meeting[1] held by the Society on February 27, 1798, which was attended by Mr. Wilberforce, the bishops whom I have named, a General, and eleven other lesser lights, including a lord and two or three baronets, the Secretary reported that in Mr. Erskine's opinion the Society might well be satisfied with the punishment already inflicted upon Williams, who had been lying some weeks in Newgate Gaol awaiting sentence. In his appeal to the Society, Erskine spoke of mercy as "a grand characteristic of the Christian religion"; but, unfortunately, it is a characteristic which, as this particular case showed, is quite as often conspicuous by its absence as by its presence. The Society refused to listen to Erskine's appeal, and it is everlastingly to his credit that he testified his indignation at their vindictiveness by returning his retainer and refusing to have any further connection with the case or with them.[2]

[1] 26 Howell's *State Trials*, 644.

[2] "On Friday morning [January, 1820] we were honoured by a visit from Lord Erskine. He sat with us more than an hour, and was very agreeable and entertaining.... We talked of the State trials in which he was formerly engaged. He asked me if I had ever read his speech on the trial of Williams, the publisher of Paine's *Age of Reason*. He was engaged by the Society for the Prevention of Vice as counsel for the prosecution. He got a verdict against Williams, which proved, he said, that there was no occasion to make new laws against blasphemous publications. A few days after the trial, as he was walking through Holborn, a woman seized him by the skirts of his coat, and dragged him to a miserable room, where Williams the

Williams[1] was sentenced to one year's imprisonment, and to be bound in his own recognisances for £1,000. Mr. Justice Ashurst, in delivering the judgment of the Court, said that attacks upon Christianity are crimes which tend to destroy all civil obligations, the solemnity of oaths, and to strip the law "of one of its principal sanctions—the dread of future punishment." If this ruling were maintained, all argument against eternal punishment would be indictable.[2] On hearing his sentence, Williams asked that he might have the indulgence of a bed. But Lord Kenyon replied: "I cannot order that. I daresay you will be treated properly. I wish to have it understood that this sentence is a very great abatement of the punishment, as in modern times, within the period I have sat in Westminster Hall, three years' imprisonment has been ordered for an offence of much less enormity than this, for this publication is horrible to the ears of a Christian."

Ashurst, J.

D. I. Eaton, 1812

Fourteen years later there came the trial of Daniel Isaac Eaton for blasphemy. Eaton was a bookseller

bookseller was laid on a sick-bed with three children in the confluent small-pox. He was so much struck with the poverty and wretchedness of the man's condition that he wrote to the Society for the Prevention of Vice, telling them that, as they had gained a verdict prohibiting the sale of Paine's blasphemous book, now there was a noble opportunity to show a truly Christian spirit, by praying the Court to mitigate the punishment of this miserable man, already afflicted with disease and poverty. The Society, he said, wrote him a letter full of compliments, but declined to relinquish their victim. The next day their agent called on Lord Erskine with a brief and fee, desiring him to crave the judgment of the Court upon Williams. He refused to take the fee, and, asking for his brief, he drew his pen through the retainer as counsel for that Society, because 'they loved judgment rather than mercy.'" — *Autobiography of Mrs. Fletcher*, ed. 1875, p. 137.

[1] On April 28, 1798—ten months after the trial.

[2] Bradlaugh, p. 17.

who had been educated at the Jesuits' College, St. Omer. In the last decade of the eighteenth century he was several times prosecuted for publishing political works, and was imprisoned for fifteen months. In 1811 he was arrested for publishing a collection of short essays by Paine, which he called the Third Part of the *Age of Reason*, and in the Easter Term, 1812, was convicted upon the information of the Attorney-General, Sir Vicary Gibbs, of having published an impious libel representing Jesus Christ as an impostor, the Christian religion as a mere fable, and those who believed in it as infidels to God. The judge in this case was Lord Ellenborough, the son-in-law of Archdeacon Paley; and in his summing-up he said: "In a free country, where religion is fenced round by the laws, and where that religion depends on the doctrines that are derived from the sacred writings, to deny the truths of the book which is the foundation of our faith has never been permitted. I am sure no impunity will be given to the offence by the verdict you will return to-day. I leave it to you as twelve Christian men to decide whether this is not a most blasphemous and impious libel."[1] This is explicit enough. According to Lord Ellenborough, it is the denial itself which is prohibited, not merely the manner of it. Eaton was an infirm old man of sixty, in bad health; but he was sentenced to eighteen months' imprisonment, and to stand in the pillory from twelve to one o'clock once a month. In those days the pillory was usually a place both of mental humiliation and physical torture; the man in the pillory was not only the mark for popular gibes, but also for much more

Ellenborough, L.C.J.

[1] 31 Howell's *State Trials*, 927.

material missiles. Eaton's case must, however, have commanded public sympathy, for I have seen an old print in which Eaton is represented as standing in the pillory and receiving food and fruit, which was passed up to him at the end of a long pole.[1] He was one of the last persons to undergo this form of punishment, for the use of the pillory fell into abeyance before the end of George III.'s reign, and was finally abolished in June, 1837. Eaton died in August, 1814.

Shelley *v.* Westbrooke, 1817

After the unhappy death of his wife Harriett in November, 1816, Shelley tried to regain possession of his children, who were living with their maternal grandparents. Shelley's claim was resisted, and a petition presented to the Court of Chancery in the name of the infants, alleging (among other things) that Shelley was an avowed Atheist, and that he had published a work in which he had blasphemously derided the truth of the Christian revelation and denied the existence of God as creator of the universe. On March 17, 1817, Lord Chancellor Eldon gave judgment against Shelley, making an order restraining him from taking possession of or intermeddling with the children.[2] Their education was assigned to a clergyman of the Church of England, with an allowance to be paid by the father.

James Williams, 1817

In this case James Williams, a bookseller and stationer of Portsea, was charged with publishing a scandalous, infamous, and impious libel, tending to bring into contempt that part of the service

[1] See, also, *Newgate Monthly Magazine*, March 1, 1825.
[2] Jacobs, *Chancery Reports in the Time of Eldon* (1821), p. 266.

of the Church of England called the Litany, and for a blasphemous parody upon the Creed of St. Athanasius. The defendant permitted judgment to go by default, and did his utmost to acknowledge his offence and to show his contrition. Mr. Justice Bagley, in passing sentence, said that "the libels well merited the epithets bestowed upon them in the information; they were calculated to undermine the foundations of all moral and religious duties, and to bring into ridicule and contempt the sacred ordinances of the Church, to fill the minds more especially of the lower orders with light and trivial matters at a time when they ought to be devoted to the service and adoration of God.....It was said that the Creed of St. Athanasius had been objected to by some of the holiest and ablest of men. It might be so; but their calm and learned discussion could be no warrant for an intemperate and impious attack like the present." For the first libel Williams was sentenced to eight months' imprisonment in Winchester Gaol, to a fine of £100, and to give security for five years; for the second libel the sentence was four months' imprisonment.[1] The case was tried on November 25, 1817, and on April 17, 1818, Williams was released by an order from the Secretary of State.

Bagley, J.

William Hone was born at Bath in 1780, and at the mature age of ten years started life in London as a lawyer's clerk. With a constant bent towards literature, at twenty he opened a book and print shop, but failed, and he then devoted himself to journalism. In December, 1817, he underwent three separate trials on

William Hone, 1817

[1] *Ann. Reg.*, 1817, p. 167.

three successive days for publishing seditious and
Dec. 18 profane libels. The first, on December 18, was for a publication bringing into ridicule and contempt "those parts of the Church service called the Catechism, the Apostles' Creed, and the Lord's Prayer." Mr. Justice
Abbott, J. Abbott, in his charge to the jury, said that he was fully convinced that the production was highly scandalous and irreligious, and therefore libellous; but if the jury were of a different opinion, their verdict would, of course, be an acquittal. After a quarter of an hour's deliberation the jury returned a verdict of "Not guilty," which was received with loud acclamations from all parts of the Court.

Dec. 19 On the following day Hone was tried before Lord Ellenborough for publishing "a parody of that part
Ellenborough, L.C.J. of the Divine Service called the Litany." Lord Ellenborough summed up strongly against the defendant, and said, in conclusion, that "he would deliver his solemn opinion, as he was required by Act of Parliament to do, and under the authority of that Act, and still more in obedience to his conscience and his God, he pronounced this to be a most impious and profane libel." The jury deliberated for an hour and three-quarters, at the end of which "the foreman, in a steady voice, pronounced a verdict of 'Not guilty.'"

Dec. 20 On the next day, again before Lord Ellenborough, Hone was charged with the publication of a profane libel "on that part of the service of the Church of England which was called the Creed of St. Athanasius." The jury once more returned a verdict of "Not guilty," which was received with a burst of applause from the crowd in court, which soon extended to the crowd outside, and for some minutes the hall and adjoining avenues rang with shouts

and acclamations.[1] The publications for which Hone was indicted were political as well as "profane."

Richard Carlile, 1817

On August 14, 1817, Richard Carlile was arrested for publishing a book called *The Parodies on the Book of Common Prayer*, and on the following day was committed to the King's Bench prison by Mr. Justice Holroyd, in default of bail to the amount of £800. After eighteen weeks' imprisonment he was liberated, on December 20, on his own recognisances of £300, without the case having been submitted to a jury.[2]

1819

In January, 1819, he was once more arrested (at the instance of the Society for the Suppression of Vice) on a charge of blasphemous libel for the publication of the three parts of Paine's *Age of Reason*. The case did not come to trial until October 12. It occupied three days, and was fully reported in the Press.[3]

Abbott, L.C.J. (Lord Tenterden)

When Carlile was proceeding to read the *Age of Reason* in his defence, to clear, as he said, the book from the charges brought against it, the judge (Chief Justice Abbott) objected that it was no defence to reiterate the libel complained of. Carlile asked for a statement of the law upon that. The Lord Chief Justice replied that the law "permits no man to impugn the whole sum and substance of the Christian religion, and to treat the Holy Scriptures, in which that religion is contained, as a book of lies and falsehoods—I cannot permit it.....To sit here and hear

[1] *Ann. Reg.*, 1817, pp. 171–4.

[2] *Life of Richard Carlile*, by his Daughter, p. 31.

[3] "Letters from St. Petersburg of November 30 state that the Emperor Alexander, apprehensive that the morals of his people would be injured by their reading the account of Carlile's trials, has given directions to the police to prevent the introduction of all the English newspapers containing it." (*Times*, December 29, 1819, quoted in *Life of Carlile*.)

the Holy Scriptures calumniated is what I ought not to do." After further argument from Carlile, the Lord Chief Justice repeated: "The law says no man shall deny the truth of the Christian religion, or deny that the Scriptures of the Old and New Testaments are of Divine authority.....Showing there is reason to doubt is doing nothing in the nature of the charge preferred against you. Your defence must apply to the charge, which is not that a book has been published suggesting calm and reasonable doubts, but that it is a book scoffing at religion." Lord Chief Justice Abbott, himself reputedly a Deist, seems to have been equally mixed in his logic and his law, for in his charge to the jury he said: "There is no subject to which scoffing, calumny, and ridicule can be lawfully applied, whether it be the private character of an individual, the public character, or any of the institutions of our country. Reason and discussion, properly conducted, are always lawful; calumny, scoffing, and ridicule are always contrary to law. The law of England is a law of liberty and freedom; it adopts into itself—indeed, it is founded upon—the religion of Christ; and it is from that religion that its greatest freedom and the principles of liberality and humanity.....emanate. It is from the Christian religion all has been drawn and derived.....The Christian religion being, as I have often been reduced to the necessity of saying in the course of this trial, a part of the law of the land, it is not fit that it should be questioned in a court of justice." The learned judge then proceeded to contrast the blessings of Christianity with the evil results of the doctrines of its opponents, as seen in the French Revolution. The jury returned an immediate verdict of Guilty.

On being brought up for judgment on November 16, counsel (Mr. Denman) moved for an arrest of judgment on the ground that the 9 William III. must be considered as having repealed the common law in this respect; but, contrary to the usual doctrine, the court held that the statute law on blasphemy is intended to supplement the common law, not in any way to annul it or abrogate it.[1] Lord Chief Justice Abbott said that, in his opinion, "the legislature intended not to repeal the common law on this subject, but to introduce certain peculiar disabilities as cumulative upon the penalties previously inflicted by the common law." Abbott, L.C.J.

Mr. Justice Bagley said: "Here Tayler's case decided that blasphemy was a misdemeanour at common law, and the statute does not make it more than a misdemeanour. The punishment, therefore, given by the Act is cumulative on punishment at common law." Bagley, J.

Mr. Justice Holroyd concurred, and Mr. Justice Best was of opinion that the statute was intended to aid the common law: "The legislature, in passing this Act, had not the punishment of blasphemy so much in view as the protecting the Government of the country by preventing infidels from getting into places of trust.....Neither Churchmen nor sectarians wished to protect in their infidelity those who disbelieved the Holy Scriptures.....Both the common law and the statute law are necessary—the first to guard the morals of this people; the second for the immediate protection of the Government."[2] Holroyd, J. Best, J.

Mr. Justice Bagley, in pronouncing sentence later, said: "The offences [of which you are found guilty] Bagley, J.

[1] Bradlaugh, p. 7.
[2] *3 Barnewall and Alderson*, 161.

are what are known to the law by the character of blasphemy, reviling those Scriptures which we believe as holy, and attempting to undermine that on which all our hopes of happiness are founded. I hope that the judgment of the court will be administered in that pure temper of Christianity which our religion inculcates. The sentence is not for the offence against God, but it is for that offence which operates against man. The law of this country gives to every man the enjoyment of his own free opinions; it imposes upon no man articles of faith; each is left to himself to worship or not to worship,[1] and to worship in such a way as he may think proper; and, as long as each man's opinion is confined within his own breast, the tribunals of this country have no right to make inquiry. But the offence for which you are to answer is an offence of a different description, for it is not that you disbelieve, but that you have attempted to introduce disbelief into the minds of others, and to introduce disbelief to such an extent as to destroy the foundation of our future hopes.....The law of this country protects the country at large against the mischief which may result from the dissemination of infidel principles."[2] The judgment of the court, emanating from the "pure temper of Christianity," was that Carlile should be imprisoned for three years in Dorchester Gaol and pay a fine of £1,500. The fine Carlile could not pay if he would, and would not if he could; he was therefore kept in prison for a further term of three years.

Jane Carlile, Nov. 13, 1819

Carlile's place as publisher of the *Age of Reason* was

[1] This is not so. People were sent to prison for staying away from church without satisfactory excuse so late as 1842.

[2] *4 State Trials* (N.S.), 1423.

taken, first, by his wife, who was sentenced to two years' imprisonment (as a married woman she had no property, and was therefore not fined); next, by his sister, who was sentenced to two years' imprisonment and £500 fine, which, as she neither could nor would pay in cash, had to be paid by a further twelve months in gaol. Mary Ann Carlile was tried by Mr. Justice Best in July, 1821. In his charge to the jury the Judge said: "I, upon my oath, am bound to state what the law is; you, on your oath, are bound to administer it. I will state that anything which has a tendency to vilify the Christian religion, or the books of the Old or New Testament, is in point of law a libel; that the faith upon which our moral conduct here, as well as our expectations of life hereafter, is built must not be shaken by any defamation of those sacred books, for upon our sincere faith in them unquestionably depends our moral conduct.....It has been said in defence by this defendant that the Lord Chief Justice, in this court, said a man had a right to question the truth of the Christian religion. Whether his lordship said that or not I do not know. If he did, no man will be more ready to bow to it than I am. It is unnecessary, however, for me to express any opinion on that point; for if it is permitted to question the truth of religion, it must be done with that sort of respect which a man ought to feel living in a Christian country. It has been stated that there are Jews who assert that Christ is not the Messiah. In their synagogues they may so assert; whether they may do it in other places, provided they do it with respect to the law of the country under which they live, is more than is necessary for me to say. In this country there are also Christians who differ from

Mary Ann Carlile, 1821

Best, J.

the Established Church as to the character of Christ. Thus Christians may, with respect, publish their opinions on that subject. But all persons are required, if they think it proper to enter upon a discussion of this sort, to do it with the respect that all ought to bear for that religion which is professed by the great body of the community, for it is upon religion that you and I administer justice. What is the obligation upon which we proceed? Upon the solemn sanction of an oath. Take away the reverence for religion, and there is an end at once of that obligation. If, therefore, it is permitted to anybody to question the truth of Christianity, it must be done with respect; even if you call it a prejudice, it is a prejudice to the great body of the British public. It will be for you to say whether this is discussed with that sort of reverence.***[Quotes] Gentlemen, I put it to you whether that is fair reasoning; whether that is temperate discussion upon the subject of that book upon which our faith rests? If you think it is, give to the defendant the advantage of that opinion; but if you think this is not the way in which the Holy Scriptures should be treated, that this is not fair argument, then I am bound to say this is a libel, and having a tendency to vilify and produce in the minds of the lower orders prejudice. Books of this description may do no mischief in minds enlightened as yours are. But these proceedings are commenced not to put down arguments against the Christian religion. The Christian religion is from Heaven. The gates of Hell shall not prevail against it, and its professors are not afraid of its being examined. It has stood for eighteen hundred years, and it will stand long. But what its professors are afraid of is that

those not capable of reasoning should have their minds weakened, their reason led away, not by fair reasoning, but by abuse and scurrility."[1] The jury immediately returned a verdict of Guilty. Sentence was not passed, however, until November 15 following, when Mr. Justice Bayley, in pronouncing the judgment of the court, said: "The court has no fears for the safety of the Christian religion. It does not believe that the rock on which Christianity stands can ever be shaken by exertions like yours. But the Court has a duty to society, to the poor who have not the means of examination, and to the young who may neglect to use the means. To these persons, whose greatest enemy you are, the Court is bound to give protection."[2] Bayley, J.

Not only Carlile's wife and sister, but his shopmen and shopwomen, came forward to sell the condemned work, and they also were sent to prison after their leader. Volunteers came from all parts of the country to quietly fill their places, first behind the counter in the shop, next in the dock, and finally in the gaol. There were at one time as many as eight of Carlile's shopmen in Newgate under sentence for blasphemy, in addition to the three Carliles, who lay in Dorchester Gaol, and those in the Compter and other prisons. It has been estimated that about 150 persons were imprisoned in this way. This has always seemed to me one of the most honourable and most affecting incidents in the history of the Freethought movement of the first half of the nineteenth century, these obscure men and women coming from different parts of the country, when travelling was difficult, and

[1] *1 State Trial* (N.S.), 1033.
[2] *1 State Trial* (N.S.), 1056, and *Times*, November 16, 1821.

almost certainly in the face of the greatest opposition from family and friends, to silently offer themselves to martyrdom for the sake of an unpopular opinion. Their martyrdom was a real martyrdom, for their imprisonment was seldom for days or weeks, but usually for a year or years. The good of their fellow-men was the sole motive which inspired their heroism, even as it was their sole reward. Their names are for the most part unknown.[1] Their action seems to have been accepted without comment as a duty performed; and so little publicity was given to their devotion that we do not even know, and I am not aware that there are any means of ascertaining, the exact number of those who actually suffered. But for all that their work was done so quietly, it was effectual, and gained that freedom for the *Age of Reason* for which they sacrificed themselves. So far as I can ascertain, since the gallant stand made by Carlile and his band of co-workers the *Age of Reason* has never again been made the subject of prosecution in this country, although it has been sold continuously and openly up to the present day.

But although immunity was purchased for the *Age of Reason*, other heretical publications were prosecuted, and we have a long list of men and women fined and imprisoned for blasphemy right through the first half of last century. Of these it is only in a few cases that any record has been kept, and if it were not for occasional references in contemporary

[1] One man, who came from Leeds to take his turn in serving in Carlile's shop, refused to give his name when he was arrested. He was indicted and tried as "a man with name unknown," and in May, 1822, he was sentenced to eighteen months' imprisonment, and to find sureties for five years. His name was Humphrey Boyle.

publications we should to-day be unaware that there were any such prosecutions.

Thomas Davison, 1821 Best, J.

Thomas Davison was indicted for the publication of a blasphemous libel, and tried before Mr. Justice Best at the Guildhall in October, 1820. The defendant conducted his own defence, which he read from a written paper. In the course of this he made offensive observations concerning the Christian religion and derogatory to the character of certain persons. The Judge told him he would not allow him to revile the Christian religion or attack the character of persons not before the Court; that his conduct was highly improper, and that he should be obliged to use means to restrain him. Upon which Davison exclaimed: "My Lord, if you have your dungeon ready, I will give you the key." For that expression the judge fined him £20. Later on in his defence he read: "The Deist is anathematised because he cannot believe that some traditions handed down among the Jews and the Christians are a Divine revelation, and not only superior to the several and respective revelations possessed by the Turks, the Brahmins, or the Hindoos, and many others, but the only genuine and authentic revelations in existence. Now it so happens that the Deist considers this collection of ancient tracts to contain sentiments, stories, and representations totally derogatory to the honour of God, destructive to pure principles of morality, and opposed to the best interests of society." For these expressions the judge imposed a fine of £40. The defendant later on said, "The bishops are generally sceptics," and for this he was fined a further £40. Davison, having been found guilty,

applied by counsel at the Michaelmas term for a *rule nisi* for a new trial, on the ground that by these fines he had been intimidated and confounded and unable to bring forward material parts of his defence. But the Court in Banco decided that the imposition of such fines was not illegal, and therefore discharged the rule. In delivering judgment Lord Chief Justice Abbott admitted that the power vested in judges should be used with the greatest care and moderation, especially when exercised on the person of a defendant. "But if the publication of blasphemy and irreligion cannot in any other way be prevented, in my opinion a judge would betray his trust who does not put it into force.....The publication of the papers was proved beyond doubt, and their meaning is not made the subject of any question. The object the defendant seemed to have in view was to re-assert the substance of the sentiments contained in those papers, and to maintain that he had a right to do so. Is a judge to sit and hear a man maintain his right to assert or publish blasphemy? Can the law be administered if the affirmative of that proposition be for a moment admitted? I am quite confident that it cannot.....Being perfectly satisfied that the effect of it [the fining] was not to deprive the defendant of anything that might have served him in his address to the jury, I am clearly of opinion that we ought not to grant a new trial." Mr. Justice Bayley and Mr. Justice Holroyd concurred, the latter saying that the defendant, in answering for a crime of publishing a blasphemous libel, "chooses to justify the thing itself and says that he will persist in his blasphemy. That is an offence at law committed in the face of the Court." Mr. Justice Best said that he had warned

the defendant that he would be fined "if he attacked the truths of Christianity or calumniated parties not before the Court. For the grossest violations of this order I fined him three times."[1] At the termination of the trial, after the defendant had been convicted, the fines were remitted. On February 23 Mr. Denman (afterwards Lord Denman) presented a petition to Parliament on Davison's behalf, complain- of the treatment he had received. A discussion arose, "in which some of the more violent spirits in the House, particularly Mr. Creevey, used very intemperate language with respect to the learned judge."[2] The House divided on the question of receiving the petition, when the ayes were thirty-seven and the noes sixty-four, so it was rejected without being read.[3]

Tunbridge, 1822

On January 22 of this year a man named Tunbridge was indicted for publishing a blasphemous libel (Palmer's *Principles of Nature*). As part of his defence Tunbridge proposed to read through the whole of the indicted book, but this Lord Chief Justice Abbott refused to permit. After several attempts the defendant abandoned his defence, saying that it was not a trial, but a mockery of justice. He was found guilty.[4]

Lawrence *v.* Smith, 1822

The *Annual Register* for March, 1822, says: "An interesting case came on for hearing before the Lord

[1] *4 Barnewall and Alderson*, p. 329; *1 State Trials* (N.S.), 1366–7.
[2] *Ann. Reg.*, 1821, p. 64.
[3] Arnould, *Memoirs of Lord Denman*, p. 212.
[4] *1 State Trials* (N.S.), 1368.

Chancellor [Eldon] during the present month. The lectures of Mr. Lawrence, the celebrated anatomist, delivered by him before the Royal College of Surgeons, having been piratically published by a bookseller named Smith, an injunction had been granted to restrain him from so doing. Smith applied to the Court to have the injunction dissolved, on the ground that the book was not entitled to the protection of the law, being irreligious and denying the immortality of the soul [passages were read which counsel contended were "hostile to natural and revealed religion and impugned the doctrines of the immateriality and immortality of the soul"]; and his counsel (Messrs. Wetherall and Rose) quoted the criticisms of the reviews to show that such was the true character of the work. Messrs. Shadwell and Wilbraham, on the other hand, contended for a different construction of the passages objected to, and insisted that there was nothing in them irreconcilable with Christianity, that the liberty of the press was materially involved in the question, and that a valuable work of 600 pages on physiological and scientific subjects ought not to be condemned, and the author to lose the price of his labour, because there might happen to be a passage or two in it which might as well have been omitted. The Lord Chancellor, after taking time to read the book, said that any work which would not receive the protection of a court of law would not be protected in that Court. In the present case he should not discharge his duty if he did not dissolve the injunction and refer the plaintiff to a court of law, where, if they considered the book justifiable, the plaintiff might have the injunction renewed." Lord Eldon said: "Looking at the general tenour of the

Lord Eldon

work, and at many particular parts of it, recollecting that the immortality of the soul is one of the doctrines of the Scriptures, considering that the law does not give protection to those who contradict the Scriptures, and entertaining a doubt, I think a rational doubt, whether this book does not violate the law, I cannot continue the injunction."[1] Here there is not the remotest suggestion of ridicule or reviling, of coarseness or scurrility; the condemned book was a scientific work, a volume of *Lectures on Physiology, Zoology, and the Natural History of Man*, which had been delivered by a distinguished professor of anatomy before his college. Lord Eldon had, in the previous month, refused an injunction to restrain the publication of a pirated edition of Lord Byron's *Cain*, on similar grounds.[2]

Waddington, 1822

In 1822 a man named Waddington was charged with having denied the authenticity of the Scriptures, and having stated that Jesus Christ was an impostor and a murderer in principle and a fanatic. He was tried at the Middlesex Sessions, and convicted. But before the verdict was pronounced one of the jury asked the Lord Chief Justice if a work which denied the divinity of Christ was a libel. The Lord Chief Justice did not give a direct answer,[3] but replied that "the language used in the publication was a libel,

Abbott, L.C.J., 1822 (Lord Tenterden)

[1] Jacob 471, *1 State Trials* (N.S.), 1370, *Times*, March 27, 1822.

[2] "It was held in 1874, in a Scotch Court, that Mr. Page Hopps's *Life of Jesus*, a Unitarian book, written in a reverent spirit, could not be pirated with impunity by an orthodox missionary, who sought to justify his piracy by the plea that it was a blasphemous publication, and therefore incapable of copyright." (*Libel and Slander*, by W. Blake Odgers, M.A., LL.D.)

[3] Stephen, *Fortnightly Review*, March, 1884, p. 301.

Christianity being part of the law of the land." Waddington then moved for a new trial, arguing that the Lord Chief Justice had misdirected the jury, because since the passing of the 53 Geo. III., c. 160, it was no offence to deny one of the persons of the Trinity to be God. The plea was ingenious, and was considered in the Court of King's Bench by four judges, who each rejected it in turn. Lord Chief Justice Abbott said that he had no doubt whatever that it is a libel to publish that our Saviour was an impostor and a murderer in principle. Mr. Justice Bayley and Mr. Justice Holroyd were of opinion that the Lord Chief Justice was perfectly right; the statute of Geo. III. removes penalties in certain cases, but leaves the common law where it stood. Mr. Justice Best delivered his judgment at some length. After dealing with the Acts of Geo. III. and Will. III., he concluded in these significant words:—

Bayley, J.
Holroyd, J.
Best, J.

"It is not necessary for me to say whether it be libellous to argue from the Scriptures against the divinity of Christ; that is not what the defendant professes to do. He argues against the divinity of Christ by denying the truth of the Scriptures. A work containing such arguments, published maliciously (which the jury in this case have found), is by the common law a libel; and the legislature has never altered this law, nor can it ever do so whilst the Christian religion is considered to be the basis of that law."[1]

The first three judges avoided saying that it was a libel to deny the divinity of Christ, and the

[1] *1 Barnewell and Cresswell*, 26, quoted by Stephen, II., p. 473; Bradlaugh, pp. 19–21; *1 State Trials* (N.S.), 1353.

last, Mr. Justice Best, said it was unnecessary for him to pronounce upon it, since that was not what the defendant professed to do.

At Waddington's trial evidence was given of the manner in which the sale of prohibited literature was carried on. A trunk or spout was passed from a room on the first floor into the shop, and by the side of this spout was a board on which were written the titles of various works, with hooks driven into the board by the side of each title. Close to the board was a cord, like a bell-rope, also communicating with the first floor, with a ring attached to the end of it. The person who desired to purchase any of the works named on the board pulled the cord and fixed the ring to the hook at the side of the book he wanted; and there was also a speaking tube to the floor above. The cord being thus fixed to the hook apprised the person above which was the book wanted; or a bag was let down through the spout, and, the price of the work being deposited therein, the bag ascended, and the book was then let down through the spout. Neither buyer nor seller saw the other.

Susannah Wright, 1822

On November 14 Mrs. Susannah Wright, one of Carlile's volunteers, was tried and found guilty of having published a libel against the Christian religion, and on February 6 she was brought up for judgment. The *Annual Register*,[1] describing Mrs. Wright's appearance in Court, says that "she was neatly dressed, but seemed to have suffered in health from the imprisonment she had undergone." Asked whether she had anything to offer in mitigation of

[1] 1823, p. 18.

punishment, she declared that, having reviewed her conduct in the solitude of her prison, she saw no reason to change her opinions, or to repent of the constancy with which she had urged them. She proceeded to argue that Christianity was no part of the law of England, but the Court (Lord Chief Justice and Mr. Justice Bayley) refused to listen to that argument. As she persisted, she was interrupted by Mr. Justice Bayley, who, "without any preliminary observations," sentenced her to be imprisoned in the House of Correction in Cold Bath Fields for eighteen months, to pay a fine of £100, and to find sureties for good behaviour. The *Annual Register* says: "Mrs. Wright was taken from the Court, protesting against the sentence, and with a contemptuous smile on her countenance."

James Watson, 1823

James Watson came to London from Leeds also as a volunteer to serve in Carlile's shop. In April, 1823, he was sentenced to twelve months' imprisonment for selling Palmer's *Principles of Nature*. Ten years later, in 1833, he suffered a further six months' imprisonment for selling the *Poor Man's Guardian*.[1]

Robert Taylor, 1827

Robert Taylor was a B.A. of St. John's, Cambridge, and for some time curate at Midhurst. He resigned his curacy in 1818, and began to write and speak upon Christian Evidences. This led to his arrest in October, 1827, on an indictment for uttering a blasphemous discourse. He was tried by Lord Tenterden, and in the following year he was sentenced to one

Tenterden, L.C.J.

[1] For the great service rendered by James Watson and Henry Hetherington in the long struggle to remove the "taxes on knowledge," see Collet Dobson Collet.

year's imprisonment. In 1831 he was indicted at the Surrey Sessions, again for a blasphemous discourse, and sentenced to two years' imprisonment and a fine of £200.

Alderson, B.

In 1838 Baron Alderson tried at York a clergyman who was charged with having published a foul libel upon a Catholic nunnery established at Scorton. The only interest for us in this case lies in the opinion pronounced by the Judge that "A person may, without being liable to prosecution for it, attack Judaism, Mohammedanism, or even any sect of the Christian religion, save the established religion of the country; and the only reason why the latter is in a different situation from the others is, because it is the form established by law, and is therefore a part of the constitution of the country. In like manner, and for the same reason, any general attack on Christianity is the subject for a criminal prosecution, because Christianity is the established religion of the country."[1]

John Cleave, 1840

Cleave was tried for publishing a blasphemous libel in the City of London in May, 1840. He was sentenced to four months' imprisonment and a fine of £20, and to find sureties for good behaviour. After being in custody for two months he was released on payment of the fine and entering into his own recognizances.

Henry Heywood, 1840

Henry Heywood was indicted and convicted at Manchester for publishing a blasphemous libel

[1] Macdonell, *Fortnightly Review*, June, 1883.

(Haslam's *Letters to the Clergy*), but was released to appear on his own recognizances.

Henry Hetherington, 1841

In December, 1840, Henry Hetherington, a printer, and one of the sturdiest and most strenuous resisters of the "taxes on knowledge," in connection with which he issued the *Poor Man's Guardian*, for which he was thrice imprisoned,[1] was arrested for blasphemy. The proceedings seem to have originated with the Bishop of Exeter, who, having seen a copy of Haslam's *Letters to the Clergy*, thought that the best reply to argument was persecution, and who therefore through Lord Normanby stirred up the Government to prosecute. But Hetherington, in his defence, told the jury that, if Haslam's *Letters to the Clergy* were an improper book, it could not be put down by prosecution. In regard to the charge of blasphemy, he said that Christian missionaries were guilty of blasphemy against the established religion of heathen countries, but it would be considered very unjust and very cruel if the natives of those countries were to seize our missionaries and imprison and ill-treat them. The Attorney-General (Sir J. Campbell) bade the jury remember "the distinction between false reasoning against religion and blasphemy. The former is to be answered; the latter is to be put down by the strong arm of the law." Lord Denman directed the jury that discussions carried on in a sober, temperate, decent style might be tolerated, but "if the tone and spirit is that of offence and insult and ridicule, which leaves the judgment really not free to act, and therefore cannot be truly called an

Denman, L.C.J.

[1] C. D. Collet, *History of the Taxes on Knowledge.*

appeal to the judgment, but an appeal to the wild and improper feelings of the human mind, more particularly in the younger part of the community, in that case.....opinions so expressed deserve the character affixed to them in this indictment."[1] The jury at once returned a verdict of Guilty. On January 18 the Attorney-General, in the Court of Queen's Bench, prayed for judgment; but Mr. Thomas, counsel for Henry Hetherington, moved in arrest of judgment on the ground that it is not blasphemous to libel the Old Testament. All cases of indictment for blasphemy against the Holy Scriptures are for matters directed against Christianity and religion together. The motion was heard before a Court of four Judges, who refused the rule in the following terms:—

Denman, L.C.J.

Lord Chief Justice Denman: "There is no ground for granting a rule in this case. Though in most cases, I believe not in all, the libel has been against the New Testament; yet the Old Testament is so connected with the New that it is impossible that such a publication as this could be uttered without reflecting upon Christianity in general; and therefore I think an attack upon the Old Testament of the nature described in the indictments is clearly indictable. It is our duty to abide by the law as laid down by our predecessors, and, taking the cases which have been referred to as assigning the limits within which a publication becomes a blasphemous libel, the publication in question is one. As to the argument that the relaxation of oaths is a reason for departing from the law laid down in the old cases, we could not accede to

[1] *1 State Trials* (N.S.), 563.

it without saying that there is no mode by which religion holds society together but by the administration of oaths; but that is not so, for religion, without reference to oaths, contains the most powerful sanctions for good conduct; and I may observe that those who have desired the dispensation from the taking of oaths to be extended have done so from respect to religion, not from indifference to it."

Littledale, J.

Mr. Justice Littledale: "The Old Testament, independently of its connection with and of its prospective reference to Christianity, contains the law of Almighty God; and therefore I have no doubt that this is a libel in law as it has been found to be in fact by the jury."

Patterson, J.

Mr. Justice Patterson: ".....it is certain that the Christian religion is part of the law of the land. The argument is reduced to this, that an indictment for libel is to be confined to blasphemy against the New Testament. But such an argument is scarcely worth anything, because it is impossible to say that the Old and the New Testaments are not so intimately connected that if the one is true the other is true also; and the evidence of Christianity partly consists of the prophecies in the Old Testament."[1]

Hetherington was sentenced to four months' imprisonment in the Marshalsea, and on his release continued to publish Freethought works as before.

Edward Moxon, 1841

While the proceedings against Hetherington were pending, he decided to test the law by becoming a prosecutor in his turn; and for this purpose he caused copies of Shelley's works to be purchased from several

[1] Reported in *5 Jurist*, p. 330 (Hilary Term, 1841); *4 State Trials* (N.S.), 594. See also Bradlaugh, p. 21; Stephen's *History*, II., p. 474, and the *Fortnightly Review*, March, 1884, and Aspland.

well-known booksellers, among them Mr. Moxon, the original publisher of a particular edition. Indictments were preferred against the vendors at the Central Criminal Court. Mr. Moxon applied for his case to be taken first, and the trial took place on June 23 before Lord Chief Justice Denman. Edward Moxon was described in the indictment in the usual terms as being "an evil-disposed and wicked person, disregarding the laws and religion of the realm"—*e.g.*, who caused "to be published a scandalous, impious, blasphemous, profane, and malicious libel of and concerning the Christian religion, and of and concerning Almighty God." Passages were then quoted from pp. 9, 14, and 19 of Shelley's poems (1840 ed.). And all this "To the high displeasure of Almighty God, to the great scandal of the Christian religion, to the evil example of all other persons in the like case offending, and against the peace of our Lady the Queen, her crown and dignity."

The Lord Chief Justice directed the jury that "the only question they had to consider was whether the indicted work deserved the imputations cast upon it by the indictment, and whether the publisher had sent it forth deliberately into the world knowing its character to be such.....For himself, he was of opinion that the best and most effectual way of acting in regard to such obnoxious doctrines [as those in the passages quoted] was to refute them by argument and reasoning. For such publications could be more effectually suppressed or neutralised by confuting the sentiments themselves than by prosecuting their authors. It was, however, the duty of the jury to decide according to the law."[1] The jury, after a

Denman, L.C.J.

[1] *4 State Trials* (N.S.), 693 *ff.*

quarter of an hour's deliberation, decided that the defendant was "Guilty." He, however, was never called up for judgment, and the indictments against the other publishers were not proceeded with.[1]

Commissioners' Report, 1841

A Royal Commission was appointed to inquire into the Criminal Law, and in their Report the Commissioners expressed their opinion as to the state of the law in regard to offences against religion as follows:—

"The course hitherto adopted in England respecting offences of this kind has been to withhold the application of the penal law, unless in cases where insulting or contumacious language is used, and where it may fairly be presumed that the intention of the offender is not grave discussion, but a mischievous design to wound the feelings of others, or to injure the authority of Christianity, with the vulgar and unthinking, by improper means. For, although the law distinctly forbids *all* denial of the being and providence of God, or the truth of the Christian religion, works in which infidelity is professed and defended have been frequently published, and have undergone no legal question or prosecution; and it is only where irreligion has assumed the form of blasphemy in its true and primitive meaning, and has constituted an insult both to God and man, that the interference of the criminal law has taken place. There is no instance, we believe, of the prosecution of a writer or speaker who has applied himself seriously to examine into the truth of the most important of all subjects, and who, arriving at his own convictions of scepticism or unbelief, has gravely and decorously submitted his

[1] *Ibid.*

opinions to others, without any wanton and malevolent design to do mischief. Such conduct, indeed, could not be properly considered as blasphemy or profaneness; and at the present day a prosecution in such a case would probably not meet with general approbation. On the other hand, the good sense and right feeling of mankind have always declared strongly against the employment of abuse and ribaldry upon subjects of this nature; and although many judicious and pious persons have thought with Dr. Lardner that it was prudent and proper to allow great latitude to manner, the application of the penal law to cases of this kind has usually met with the cordial acquiescence of public opinion."

Mr. Bradlaugh, commenting upon this opinion of the Commissioners, remarked that "The difficulty is that what a prosecuting counsel or a bigoted jury may consider ribald and abusive in one case, an enlightened judge and tolerant jury may hold to be fair argument in another."[1]

Charles Southwell, 1842

In January, 1842, Charles Southwell was tried in Bristol on the charge of having published a blasphemous libel in the *Oracle of Reason*, entitled "The Jew Book." He was sentenced to twelve months' imprisonment and a fine of £100.

George Jacob Holyoake, 1842

On May 24, 1842, George Jacob Holyoake, then a mathematical teacher and social missionary, lectured at the Mechanics' Institute, Cheltenham, upon "Home Colonisation as a Means of Superseding Poor Laws and Emigration." At the conclusion of the lecture, on

[1] P. 25.

discussion being invited, a local preacher, named Maitland, said that, although Mr. Holyoake had told them their duty to man, he had not told them their duty to God, and asked whether there should not be churches and chapels in the community. Mr. Holyoake, in the course of his reply, said: "Our national Church and general religious institutions cost us, upon accredited computation, about twenty millions annually. Worship thus being expensive, I appeal to your heads and your pockets whether we are not too poor to have a God? If poor men cost the State as much, they would be put like officers on half pay; and while our distress lasts I think it would be wise to do the same thing with deity. Thus far I object, as a matter of political economy, to build chapels in communities. If others want them, they have themselves to please; but I cannot propose them. Morality I regard, but I do not believe there is such a thing as God." For this speech Mr. Holyoake was arrested on June 3, and was tried at the Gloucester Assizes on August 15 on the following indictment:—

"*Gloucester to wit.* The jurors for our lady the Queen upon their oath present that George Jacob Holyoake, late of the parish of Cheltenham, in the county of Gloucester, labourer, being a wicked, malicious, and evil-disposed person, and disregarding the laws and religion of the realm, and wickedly and profanely devising and intending to bring Almighty God, the Holy Scriptures, and the Christian religion into disbelief and contempt among the people of this kingdom, on the twenty-fourth day of May, in the fifth year of the reign of our lady the Queen, with force and arms, at the parish aforesaid, in the county aforesaid, in the presence and hearing of divers liege subjects of

our said lady the Queen, maliciously, unlawfully, and wickedly did compose, speak, utter, pronounce, and publish with a loud voice, of and concerning Almighty God, the Holy Scriptures, and the Christian religion, these words following, that is to say:—'I (meaning the said George Jacob Holyoake) do not believe there is such a thing as God; I (meaning the said George Jacob Holyoake) would have the Deity served as they (meaning the government of this kingdom) serve the subaltern, place him (meaning Almighty God) on half pay,' to the high displeasure of Almighty God, to the great scandal and reproach of the Christian religion, in open violation of the laws of this kingdom, to the evil example of all others in like case offending, and against the peace of our lady the Queen, her crown and dignity."

Mr. Holyoake conducted his own defence, and addressed the jury for nine hours and fifteen minutes. Mr. Justice Erskine, in his summing-up, told the jury that they had not to consider whether it is politic or wise to imprison for opinion. "We have to decide on the law as we find it. I shall make no law—the judges made no law, but have handed it down from the earliest ages." He concluded by telling them that if they were convinced the words complained of "were uttered with levity, for the purpose of treating with contempt the majesty of Almighty God," then the defendant was guilty; if they had a reasonable doubt, then they must give him the benefit of it. The jury apparently had no "doubt," and after a very brief deliberation returned a verdict of "Guilty." Mr. Justice Erskine pronounced sentence in the following words:—"……You have been convicted of uttering language, and, although you have been adducing long

Erskine, J.

arguments to show the impolicy of these prosecutions, you are convicted of having uttered these words with improper levity. The arm of the law is not stretched out to protect the character of the Almighty; we do not presume to be the protectors of our God, but to protect the people from such indecent language. And if these words had been written for deliberate circulation, I should have passed on you a severer sentence. You uttered them in consequence of a question. I have no evidence that this question was put to draw out these words. Proceeding on the evidence that has been given, trusting that these words have been uttered in the heat of the moment, I shall think it sufficient to sentence you to be imprisoned in the Common Gaol for six calendar months."[1]

If six calendar months was a fit sentence for words uttered in the heat of the moment, one can only wonder what sentence the Judge would have given for words written for deliberate circulation!

George Adams, 1842

When G. J. Holyoake was arrested, the sale of the *Oracle of Reason*, which he was editing in place of Charles Southwell, then confined in Bristol Prison, was carried on in Cheltenham by a George Adams, who was arrested on June 23. His wife, learning of the arrest, went to the police station to see her husband, and she also was arrested. Mrs. Adams had five children, and a policeman was sent with her to her home to fetch the infant; the other four were left

[1] *Last Trial by Jury for Atheism*, by George Jacob Holyoake. This gives a full account of the proceedings which led up to the trial, the trial, imprisonment, and release. The title of this pamphlet is somewhat of a misnomer. Mr. Holyoake was not tried for "atheism," but for blasphemy, as the indictment clearly shows. And unfortunately it turned out to be by no means the last trial of its kind by jury.

alone in the house. Adams and his wife were both committed to take their trial at the Gloucester Assizes; but the trial of Mrs. Adams was never proceeded with. Adams, although arrested after Mr. Holyoake, was tried immediately before him. Mr. Holyoake having elected to conduct his own defence, the Court decided to take his case last of all. Witnesses spoke to Adams's high character; but Mr. Justice Erskine told the jury that, "had Adams committed a robbery, such a character might have weight, but in extenuation of religious offences it was of no service."[1] The Judge, in delivering sentence, told the prisoner that he had been convicted of publishing a libel of "a most horrid and shocking character." He was imprisoned for one month.

The Act of 1842

In 1842 an Act was passed which came into operation on June 30 of that year, and incidentally affected the prisoners then on trial (George Adams and George Jacob Holyoake) and all future prisoners for blasphemy. Up to this period persons so accused were liable to be tried by the Justices of the Peace, who from the fourteenth century had had authority to "hear and determine" all manner of felonies, trespasses, and other crimes, except treason. These Justices at Quarter Sessions had terrific power in their unskilled hands, and since death was a common penalty (in 1810 no fewer than 222 offences were punishable by death) they caused a very large number of persons to be executed. A feeling grew up, however, that capital offences should be taken out of their hands, and by degrees their jurisdiction became narrowed. In 1842, soon after the

[1] *Ibid.*, p. 30.

punishment of death had been abolished for all crimes except seven, it was found necessary to particularly define the powers of the Justices in General and Quarter Session, and this was done by the Act of 5 and 6 Vic., c. 38, which took from them the power of trying persons accused of a capital felony, offences punishable by penal servitude for life, and eighteen other specified offences, among which were included "blasphemy and offences against religion" and "publishing blasphemous libels." From the date of this Act such offences had to be tried at the Assizes. It was, no doubt, an immense advantage to blasphemy prisoners that they should be removed from the atmosphere of prejudice and ignorance, which, seventy years ago, was too often to be met with among the unpaid magistracy.

Thomas Paterson, 1843

After the imprisonment of Southwell and Holyoake, Thomas Paterson, a Scotchman, took over the editorship of the *Oracle of Reason*. He was arrested on the charge of exhibiting profane placards, and on January 27, 1843, he was sentenced to three months' imprisonment. After his release he went to Edinburgh, and in November of the same year he was there sentenced to fifteen months' imprisonment for "wickedly and feloniously publishing, vending, and exposing for sale certain blasphemous books containing a denial of the truth and authority of the Holy Scriptures and the Christian religion." He was not permitted, in his speech to the jury, to quote passages from the Bible for the purpose of justifying his opinion of it. "No animadversions," said the Lord Justice Clerk, "can have the slightest effect in making the Court swerve from its duty. We tell you what the law is—that the

Clerk, L.J.

publication of works tending to vilify the Christian religion is an offence in law: and it is no answer to say that, in your opinion, the passages contained in these works are true, and that the Bible deserves the character ascribed to it. If you can show that the Lord Advocate has mistaken the meaning of these passages, that they do not deny the truth of the Bible, that they do not vilify it, that is a point on which the jury will judge."

In his charge to the jury the Lord Justice Clerk enlarged upon Lord Hale, saying:—

"The Holy Scriptures and Christian religion are part of the statute law of the land, and whatever vilifies them is, therefore, an infringement of the law. There can be no controversy in a court of justice as to the merits or demerits of a law. Our duty is to interpret and explain the law as established, while yours is to apply it. Now, the law of Scotland, apart from all questions of Church establishment or Church government, has declared that the Holy Scriptures are of supreme authority. It gives every man the right of regulating his faith or not by the standard of the Holy Scriptures, and gives full scope to private judgment regarding the doctrines therein; but it expressly provides that all 'blasphemies shall be suppressed,' and that they who publish opinions 'contrary to the known principles of Christianity' may be lawfully called to account, and proceeded against by the civil magistrate. The law does not impose on individuals any obligation as to their belief. It leaves free and independent the right of private belief, but it carefully protects that which was established as part of the law from being brought into contempt."[1]

[1] Shortt, p. 309, quoted by Bradlaugh, p. 25.

Matilda Roalfe, 1844

When Paterson was imprisoned Matida Roalfe went from London to Edinburgh to volunteer in the work of selling "blasphemous" publications. She was arrested in January, 1844, and sentenced to two months' imprisonment. On her liberation she again took up the sale of the condemned literature.

How many persons were prosecuted by the Edinburgh authorities at this period I do not know. I find a mention of Thomas Finlay, who was imprisoned for six months, and Henry Robinson, who was also imprisoned; but I have no details of the proceedings.

Briggs *v.* Hartley, 1850

In this case the testator, by his will dated October, 1843, left a legacy for "the best essay on the subject of natural theology, treating it as a science, and demonstrating the truth, harmony, and infallibility of the evidence on which it is founded, and the perfect accordance of such evidence with reason; also demonstrating the adequacy and sufficiency of natural theology, when so treated and taught as a science, to constitute a true, perfect, and philosophical system of universal religion (analogous to other universal systems of science, such as astronomy, etc.), founded on immutable facts and the works of creation, and beautifully addressed to man's reason and nature, and tending, as other sciences do, but in a higher degree, to improve and elevate his nature, and to render him a wise, happy, and exalted being." Vice-Chancellor Shadwell, in deciding that the bequest was void, said: "I cannot conceive that the bequest in the testator's will is at all consistent with Christianity, and, therefore, it must fail."[1]

Shadwell, Vice-Chancellor

[1] 19 *Law Journal*, Ch. 416. See "Beswick Bequest," p. 96.

In the year 1857 there occurred a case which forms a sort of landmark in the history of nineteenth-century prosecutions for "offences against religion." In that year a poor well-sinker, named Thomas Pooley, living in a Cornish village, was sentenced to one year and nine months' imprisonment for blasphemy. The circumstances were both peculiar and pathetic, for Pooley was not exactly sane. He was a good husband and father, an honest, industrious man; but upon religious questions his was a mind distraught. He was not a Freethinker; he had read no Freethought literature, and had not come into contact with Freethinkers. The information was laid against Pooley by the Rev. Paul Bush, rector of Duloe; the magistrate who received the information and committed him to trial was the Rev. James Glencross. At the trial Pooley had no counsel to defend him. The counsel employed to prosecute him was John Duke Coleridge, afterwards Lord Chief Justice; the judge was Mr. Justice Coleridge, father of the prosecuting counsel.

Thomas Pooley, 1857

Coleridge, J.

Pooley was indicted on four counts and convicted on three. The first count charged him with chalking blasphemous words upon a gate. These words, according to the sworn testimony of the Rev. Paul Bush, were: "Duloe stinks with the monster Christ's Bible," with the signature. "T. Pooley." These words are not pretty; they are peculiar, and the witnesses do not seem to have been quite agreed as to what they exactly were. Pooley, however, was found guilty, and was sentenced to six months' imprisonment for having written them. The second count was not supported. The third charged Pooley with having told the people that "If they would burn their Bibles, and use the ashes for dressing the land, it

would get rid of the potato disease." These words, again, are peculiar. One would imagine they could only be smiled at as a poor joke; or, if said seriously, were clear evidence of delusion. But the Court regarded this advice as blasphemy, and sentenced Pooley to a further six months' imprisonment for recommending Bible ashes as a top-dressing for the land and a cure for potato disease. Finally, for words spoken in the heat of his excitement and indignation when being taken to prison he was sentenced to a further nine months' imprisonment—making twenty-one months in all. Before the sentence was pronounced Pooley turned to the jury and said he "hoped they were not Christians. God was great and wise, but even if they tortured him he would rather give his life-blood than endure Christian tyranny." Upon receiving his sentence he cried: "My lord, I beg you to put on the black cap at once!" Poor helpless, undefended Pooley! His persecutors were quite merciless, and he was sent to Bodmin Gaol. Within a fortnight he had to be transferred from Bodmin Gaol to Bodmin Asylum. A petition for his pardon was got up by Mr. Holyoake, who wrote a pamphlet describing the whole proceedings; it was presented and at first refused; but the authorities at length gave way, and after five months' detention Pooley was released.

The case might have sunk into the obscurity of the numberless other cases which had preceded it had it not attracted the attention of two notable men—John Stuart Mill and Henry Thomas Buckle. Mill, in his essay *On Liberty*,[1] briefly referred to Pooley's prosecution, and Buckle was asked to review Mill's essay for

[1] R. P. A. ed., p. 28.

Fraser's Magazine for April, 1859, just two years after Pooley's sentence. Buckle saw the reference, and could hardly believe it; so he proceeded to investigate the case in all its details. Then, in writing his review, he devoted several pages—indeed, a considerable portion of the whole review—to a castigation of everyone concerned in the persecution. He cried shame upon the sentence, shame upon those who asked for it, and shame upon those who inflicted it. The treatment of Pooley he denounced as a great crime, and said he would make it his business to blazon forth the names of the criminals, so that the world might see what was being done. The offenders must be punished, and he could think of no greater punishment than to preserve their names. Mr. Coleridge (the son) wrote a bitter reply, which was published in the next number of *Fraser's Magazine;* but although he then, naturally enough, attempted to justify both himself and his father, there can be little doubt that Buckle's words sank into his mind to bear good fruit a quarter of a century later on. Pooley's case had simply been treated on the traditional lines laid down by Lord Hale nearly two hundred years before, and endorsed by the highest Judges in the land after him. So blind was the judicial acceptance of Hale's law that not a Judge dreamed of departing from precedent until Buckle startled the world by declaring that such a judgment was "a revival of cruelty, a revival of bigotry, a revival of the tastes, habits, and feelings of those days of darkness which we might have hoped had gone for ever!"

Charles Bradlaugh, 1859

At Bolton the Concert Hall was engaged by Mr. Bradlaugh for lectures on September 20 and 21; but when he arrived there from London to deliver them he found the walls placarded with the announcement that the lectures would not be permitted to take place. He sued the Bolton Concert Hall Co. for £7 damages for breach of contract, the £7 representing the expense to which he had been put. He was, however, non-suited by the County Court Judge on the ground that the lectures to be delivered were illegal—of which, of course, there was no possible evidence.

During the next quarter of a century it not infrequently happened that contracts for letting halls to Freethought lecturers were broken. Sometimes the lecturers or their agents sued for breach of contract, but without success. See the case of Cowan *v.* Milbourn in 1867, which was carried to the Court of Exchequer.

Bradlaugh *v.* Edwards, 1861

This was a case in which Edwards (Superintendent of Police) arrested Mr. Bradlaugh in Devonport, on March 3, 1861, just as he was about to lecture, he having only uttered the words, "Friends, I am about to address you on the Bible." Mr. Bradlaugh was refused bail and detained in a stone cell at the police-station. At the hearing before the magistrates on the following day the case was dismissed. Mr. Bradlaugh then brought an action for wrongful imprisonment against Edwards, and the case was heard at the

Channell, B.

Assizes at Exeter before Mr. Baron Channell on July 29. The jury gave a verdict for the plaintiff, with one farthing damages. One point arose during the hearing which we may note here. Questions were put to Mr. Bradlaugh bearing upon his opinions

upon religion; he refused to answer them, on the ground that if he answered in the affirmative it would subject him to a criminal prosecution. Baron Channell asked for the Act of Parliament. Mr. Bradlaugh referred him to 9 Will. III.; and, having read it, the Judge remarked that it applied only to those educated in or making profession of Christianity. Mr. Bradlaugh replied that he had been educated according to the Church of England. Baron Channell thereupon held that he was entitled to object to answer. The Judge, therefore, at this period had no doubt whatever that criminal prosecutions could be taken under this Act.

The verdict was so unsatisfactory that Mr. Bradlaugh moved the Court of Common Pleas for a new trial, and the motion was heard in November of the same year before the Lord Chief Justice (Sir William Erle), Mr. Justice Williams, Mr. Justice Byles, and Mr. Justice Keating. The rule was refused, with the suggestion that the imprisonment was rather a benefit than an injury. Lord Chief Justice Erle, in the course of his judgment, said: "I know not in the least what are the opinions of the plaintiff that he was bent upon publishing; all that I am certain of is that there are opinions which are most pernicious. There are opinions which are in law a crime, and which every man ought—that is, every man of sound sense and generally esteemed of sound sense—would generally consider to be wrong. I do not know what these opinions are, but there are such opinions. If the plaintiff wanted to use his liberty for the purpose of disseminating opinions which were in reality of that pernicious description, and the defendant prevented him from doing that which might be a very

Erle, L.C.J.

pernicious act to those who heard him, and if the estimate I have mentioned be the true one, it might be a matter he might afterwards deeply regret; it might be that the jury thought the act of imprisonment of the plaintiff under such circumstances was in reality not an injury for which a large money compensation ought to be paid, but, on the contrary, was an act which in its real, substantial result was beneficial to the plaintiff, and so the nominal wrong would be abundantly compensated by the small sum given."

Byles, J. Mr. Justice Byles, in expressing his agreement with the Lord Chief Justice, said: "I consider by the law of this land a man has a right to hold any opinions of his own, provided he does not improperly publish them.....There are certain opinions, striking at the very root of public and private morality, the dissemination of which is more injurious than almost any act that can be committed." In the judgment of both these Judges it is the opinion, the matter, which is a crime, and not the manner in which such opinions are expressed. Mr. Bradlaugh appealed against the decision of the Court, but his application was refused, Lord Chief Justice Erle holding that a wrongful imprisonment, which might have prevented the intended utterance of heretical opinions, was not a tort for which damages could be recovered.

Salisbury *v.* Williams, D.D., 1864

The publication of a "mildly rationalistic" volume entitled *Essays and Reviews* in the year 1860 produced a great outcry in orthodox circles. The volume consisted of seven essays and reviews—an essay on "Education," by Dr. Temple, afterwards Archbishop of Canterbury; a review of Bunsen's *Biblical Researches* (a "study making short work of the

prophecies "[1]), by Prof. Rowland Williams; a "Study of the Evidences of Christianity" ("the most drastic treatise in the bundle "[2]), by Prof. Baden-Powell; a review of the *Séances Historique de Génève*, by H. B. Wilson. "Whether the exasperating element in this treatise was its hostility to Scripturalism, and its hardy allusion to 'the dark patches of human passion and errors which form a partial crust' upon the Bible, or its attack on the very principle of creed acceptance, certain it is that it aroused boundless wrath in comparison with the remaining essays."[3] These were an essay "On the Mosaic Cosmogony," by C. W. Goodwin; "On the Tendencies of Religious Thought in England from 1688 to 1830," by Mark Pattison; "On the Interpretation of Scripture," by Prof. Jowett. All these essayists, save one, were clergymen of the Church of England; they were called "'the Septem contra Christum'—six ministers of religion combining to assail the faith they outwardly professed—seven authors of an immoral rationalistic conspiracy."[4] Seven pietists, "seven champions not against Christendom," were got to answer the essayists; but, deeming argument inadequate for the purpose, recourse was had to the law, and a prosecution was commenced by the Bishop of Salisbury against Dr. Williams, and by a country clergyman, the Rev. Mr. Fendall, against Mr. Wilson. The legal argument in these cases was carried on for several days, and occupies 78 pages of law reports; it is therefore impossible to give here anything more than the result of the proceedings, although they are

Fendall *v.* Wilson (*Essays and Reviews*)

[1] *The Dynamics of Religion*, by J. M. Robertson, pp. 251–258.
[2] *Ibid.* [3] *Ibid.*
[4] *Life of Gladstone*, by John Morley, Vol. I., p. 597.

interesting reading for the light they throw on the development of the religious idea in this country. The points most vitally in dispute concerned the doctrine of plenary inspiration and that of eternal punishment. On June 25, 1862, in the Court of Arches, the Dean, Dr. Lushington, gave judgment against the essayists, and pronounced sentence of one year's suspension, with costs. Dr. Williams and Mr. Wilson, however, appealed to the Judicial Committee of the Privy Council. The Lord Chancellor (Lord Westbury) reversed the decision of the Court of Arches, with the costs of the appeal, the Archbishops dissenting on certain points. "Lord Chancellor Westbury delivered the decision in a tone described in the irreverent epigram of the day as 'dismissing eternal punishment with costs,'"[1] because, as it was maliciously added, "it was a matter in which he felt a personal interest."

Cowan *v.* Milbourn, 1867

This was an action brought in the Court of Passage, Liverpool, to recover compensation for breaches of an agreement to let the St. Anne's Assembly Rooms for the delivering of lectures on January 20 and February 3, and for holding a tea-party to commemorate the birthday of Thomas Paine on January 29. The contract was annulled at the instance of Major Grieg, the Chief Constable. The titles of the lectures, to be delivered by Mr. Charles Watts, were announced as follows: "The Character and Teachings of Christ: The former Defective, the latter Misleading"; "The Bible shown to be no more Inspired than any other Book." The Recorder,

[1] Morley, *Ibid.*

Mr. J. B. Aspinall, eliciting from the plaintiff that he had been educated in the Christian religion, therefore held that the case came under the Act of William III., and said that, independently of that, he considered it most improper to place placards on the walls attacking religion or the cherished beliefs of a number of our fellow-countrymen.[1] He, however, advised the jury that there was no defence whatever for the breach of contract in regard to the tea-party. The jury, after a brief deliberation, decided that it was intended to use the rooms on the Sunday for blasphemous lectures, and on that count gave a verdict for the defendant. As to the breach in regard to the tea-party, they found for the plaintiff, with one farthing damages.

Mr. Cowan appealed from the local court to the Court of Exchequer, and the case was heard before Lord Chief Baron Kelly and Barons Martin, Bramwell, and Pigott. The Court refused the rule. The Lord Chief Baron said that, in his opinion, it would be a violation of the duty of the Court to have any hesitation on any of the points raised in refusing the rule. Whatever contract might have been entered into by the defendant, no doubt could be entertained that he was justified in preventing his rooms being used for the purpose mentioned. It needed no authority to show that Christianity was part and parcel of the law of England; and to publicly attempt, by argument and reasoning, to prove that the character of our Saviour is defective and his teachings misleading is a violation of the first principle of the law, and cannot

Kelly, L.C.B.

[1] If this is good law, it might be applied to the offensive placards which disgrace our walls during a General Election!

be done without blasphemy. Not only was the defendant justified in refusing the use of his rooms for the purpose in question, but he was bound by the laws of this country to do all in his power to prevent them being so used. Mr. Baron Martin, in concurring, said: "I protest against the notion that this is any punishment of the persons advocating these opinions. It is merely the case of the owner of property exercising his rights over its use." (Dr. Hunter, commenting on this, says: "Here the learned Baron was wrong, for he had by contract parted with his right to use for the times at which the lectures were to be delivered."[1]) Mr. Baron Bramwell was also of the opinion that the use of the rooms was clearly illegal, under the 9th William III., and added that he was glad to arrive at this conclusion, as these placards must have given great pain and offence to those who read them. Mr. Justice Stephen, commenting upon this case, points out that "this decision is strong to show that the true legal doctrine upon the subject is that blasphemy consists in the character of the matter published, and not in the manner in which it is stated. The propositions intended to be expressed on the placards which were thus held to be blasphemous could hardly have been expressed in less offensive language."[2]

Martin, B.

Bramwell, B.

The *National Reformer*, 1868

Early in 1868 the Inland Revenue Commissioners, acting under 60 Geo. III., c. 69, an Act passed in 1819 for the suppression of cheap democratic and Freethought literature, called upon Charles Bradlaugh

[1] Bradlaugh, p. 27. For report of case, see *Law Reports*, 2 Ex. 230.
[2] *Hist. of Crim. Law*, II., p. 474.

to give sureties in the sum of £400 against the appearance of blasphemy or sedition in the columns of the *National Reformer;* they also claimed £20 for each separate copy of the paper. Mr. Bradlaugh intimated his refusal to comply with the Commissioners' request, and proceedings were therefore commenced against him. He was served with a writ from Somerset House for recovery of two penalties, £50 for each day since publication and £20 for every copy published of the issues of May 3 and May 18. On these two numbers alone the penalties soon reached to a quarter of a million. Mr. Bradlaugh was charged (1) with publishing the *National Reformer;* (2) with being its proprietor; and (3) with selling it at a less price than sixpence. If the price had been sixpence, no proceedings could have been taken; it was cheap blasphemy and cheap sedition which were illegal. On June 1 Mr. Bradlaugh entered four pleas in his defence; the Crown objected that he could plead only one plea, and referred him to a statute of James I. After some controversy between himself and the Solicitor to the Crown, Mr. Bradlaugh made application before Mr. Justice Willes to have his pleas reinstated, and the judge eventually gave him liberty to raise all the issues involved in his pleas. The case came on for hearing on June 13, in the Court of Exchequer, before Mr. Baron Martin, with the Attorney-General (Sir John Karslake) and the Solicitor-General on behalf of the Treasury. When the jury was called, only ten gentlemen answered to their names. The Attorney-General refused "to pray a tales," and Mr. Bradlaugh also refused, so the jury was discharged.

In January of the following year Mr. Bradlaugh 1869

received notice that the Government intended to proceed to trial; and on February 5 the case came before Mr. Baron Bramwell, with the new Attorney-General (Sir Robert Collier) and Solicitor-General (Sir J. D. Coleridge) appearing to enforce these odious old Security Laws. As before, only ten jurymen appeared; but on this occasion the Crown did "pray a tales," and the absent jurymen were fined. The verdict was, of course, for the Crown; but seven points were reserved on Mr. Bradlaugh's behalf for argument and decision. The penalties by this time amounted to between £3,000,000 and £4,000,000.

On April 15 Mr. Bradlaugh moved for a new trial before Lord Chief Baron Kelly, Barons Bramwell and Cleasby, and a rule *nisi* was ultimately granted him on three points. If he succeeded on either of two points, the prosecution was at an end; if he failed in these and succeeded in the third, a new trial would be necessary. On the 23rd, however, the Solicitor to the Treasury wrote to Mr. Bradlaugh that it was proposed to repeal the enactments under which the proceedings against him had been taken; therefore the Law Officers of the Crown would agree to a *stet processus* if he would give his consent.

The repealing Bill was introduced at once into the House of Commons, and passed through all its stages there and in the Lords by June 21. The Government never offered to refund to Mr. Bradlaugh the heavy cost of this vexatious litigation, which was instituted for the sole purpose of suppressing cheap controversial literature.[1]

[1] "The defence of Mr. Bradlaugh was the most valuable personal contribution ever made to the liberty of the Press." (C. D. Collet, *History of the Taxes on Knowledge*, II., p. 195.

1872 In 1872 the Postmaster-General gave Mr. Bradlaugh notice that the *National Reformer* was to be deprived of the privilege of registration as a newspaper. Much alarm was expressed in the general Press at this new method of Press censorship. The Postmaster-General, however, reconsidered the matter, and withdrew his objection.

Annie Besant, 1878 By a covenant in a separation deed, executed in 1873, between the Rev. Frank Besant and Mrs. Annie Besant, it was agreed that the infant daughter of the marriage should remain in the custody of the mother during eleven months in each year. In 1878 Mr. Besant petitioned that his daughter might be delivered up into his custody. The petition was heard before the Master of the Rolls (Sir George Jessel) in the month of May. In delivering judgment in favour of Mr. Besant, Sir George Jessel stated that one of the "elements" which induced him to come to this conclusion was that Mrs. Besant not merely believed in no religion, but published and avowed that unbelief; that she had published and written pamphlets, and had delivered lectures, avowing she had no belief in a Providence or a God; that she had tried to convince others that denial of all religion was a right and proper thing. He must, he said, as a man of the world, consider what effect on a woman's position this course of conduct must lead to: it must cut her off from social intercourse with the great majority of her sex; he did not believe a single clergyman's wife in England living with her husband would approve of such conduct, or associate with Mrs. Besant.[1]

Master of the Rolls (Sir George Jessel)

[1] It was left to a Jewish judge to suggest that association with an English clergyman's wife constitutes the hallmark of respectability!

Further, Mrs. Besant carried her speculative opinions into practice as regards the education of the child, and considered it her duty so to educate the child as to prevent her having any religious opinions whatever until she attains a proper age. "I think," said the Master of the Rolls, "such a course of education not only reprehensible, but detestable, and likely to work utter ruin to a child; and I certainly should upon this ground alone decide that this child ought not to remain another day under the care of the lady."[1]

Mrs. Besant appealed against the order of the Court, and the appeal was heard in the March following. On April 9 Lord Justice James delivered the judgment of the Court (Lord Justices James, Baggalley, and Bramwell), dismissing the appeal.

Henry Seymour, 1882

On May 3, 1882, a young man named Henry Seymour, secretary of a newly-formed branch of the National Secular Society in Tunbridge Wells, was served with a summons by the superintendent of police, charging him with blasphemous libel. The alleged libel consisted of a placard announcing a concert by some of the members on Easter Sunday, which contained the line, "Hamlet and the Holy Ghost." This was objected to, and on Easter Sunday all the hoardings on which the placards were posted were visited by the police, and the word "Holy" cut out or covered over. The magistrate committed Seymour for trial, and the case was heard before Mr. Justice Hawkins at the Maidstone Assizes in the following July. The defence was undertaken by the National Secular Society. Mr. Bradlaugh (the President of the Society) was of opinion that the use of

[1] *Law Reports*, xi., Chancery Div., p. 508 *ff.*

the word "Holy" on the placard was thoughtless and purposeless, but that, had the placard stood alone, it might have been fought. There was, however, a second charge of a more foolish misuse of another word in another (written) placard, intended as a smart retort to an impertinent placard issued by some vulgar Salvationists. Seymour, moved by indignation, had replied to the Salvation Army vulgarity with a retort which, with one word omitted, would have been fully justified. The Salvation Army, however, was under the protection of the law. When the case came on for hearing at Maidstone, Mr. Crump, for the defendant, said that, as the issue of the bill involved no principle held by the prisoner or the Society to which he belonged, he had advised him to withdraw his plea of "Not guilty"; the second bill was merely a small written affair. The counsel for the prosecution (the Tunbridge Wells Police Committee) did not press the matter unduly, and only asked that Seymour should be bound over to come up for judgment when called upon.

George Wm. Foote, W.J.Ramsey, and H. A. Kemp, 1883 March 1

Messrs. Foote, Ramsey, and Kemp, as editor, publisher, and printer respectively of the *Freethinker*, were tried before Mr. Justice North at the Old Bailey on Thursday, March 1, 1883, on a charge of publishing a blasphemous libel in that journal. Sir Hardinge Giffard, Q.C. (now Lord Halsbury), instructed by the City Solicitor, in opening the case for the prosecution described the offence of blasphemy as consisting in, "among other things, making contumacious or disrespectful reproaches against the Christian religion or the Holy Scriptures. By the law of this country Christianity was part of our common law." Counsel, nevertheless, admitted that

"doubts on many points—or many theological tenets —had, of course, occupied the minds of men for more than 1,800 years, and so long as doubts of this description were expressed with due regard to the feeling of others, and without the intention of outrage and insult, he would be a very rash person indeed who would think to drag into a criminal court disquisitions conceived in such a spirit, even although they might be adverse to the views which the great majority of Christian people entertained." An exceedingly able defence was made by Mr. Foote under the very considerable difficulty of the hostility openly shown by the Judge. Mr. Ramsey also made an excellent defence. Mr. Justice North commenced his summing-up by animadverting on the manner in which Mr. Foote "had wasted the time of the Court"; he then stated his view of the law of blasphemy, which was decidedly more comprehensive even than that put before the jury by Sir Hardinge Giffard. "The law of blasphemy," said Mr. Justice North, "is clear, and I am going to tell you what is sufficient to constitute blasphemy. The illustrations I am going to give you, however, will not cover the whole of what may be called blasphemy. Now, if by writing, or verbally, anyone denies the existence of the Deity, or denies the providence of God, if he puts forward any abuse or contumely or reproach with respect to the Almighty, or holds up the persons of the Trinity, whether it is our Saviour Christ or anyone else, to contempt or derision; or ridicules the persons of the Trinity, or God Almighty, or the Christian religion, or the Holy Scriptures in any way, that is what the law considers to be blasphemy." The Judge's charge to the jury was throughout strongly

North, J.

adverse to the defendants. The case had lasted nearly seven hours when the jury retired at ten minutes to five; on returning at five minutes past seven the foreman intimated that there was no likelihood of their coming to an agreement. In discharging them, the Judge announced that he would take the case on the Monday following with a different jury. He peremptorily refused an application to allow the defendants to renew their bail. At the second trial, held on March 5, Mr. Foote's defence occupied three hours, and was even more able and more eloquent than on the previous occasion, in spite of the disabilities under which he was labouring of having been detained three days and four nights in prison without opportunity of consulting a library or friends. Mr. Ramsey again made a good defence, although he, too, was similarly handicapped. Mr. Justice North once more summed up strongly against the defendants. Mr. Foote having alluded to the prosecutor and his antecedents, Mr. Justice North assured the jury that "the real prosecutor is her Majesty the Queen, and the person by whom this prosecution is instituted is the Public Prosecutor, without whose sanction it could not have been commenced." At the conclusion of the Judge's speech the jury considered their verdict, and, after the briefest possible consultation, they returned a verdict of "Guilty" against all three defendants. Mr. Justice North, in passing sentence, said: "George William Foote, you have been found guilty by the jury of publishing these blasphemous libels. This trial has been to me a very painful one. I regret extremely to find a person of your undoubted intelligence, a man gifted by God with such great ability,

The same, March 5

should have chosen to prostitute his talents to the services of the Devil.....the sentence I now pass upon you is one of imprisonment for twelve calendar months." Ramsey was sentenced to nine months' and Kemp to three months' imprisonment.

Charles Bradlaugh (Bradlaugh, Foote, and Ramsey), 1883

Coleridge, L.C.J.

This prosecution, undertaken at the instance of Sir Henry Tyler, against Messrs. Bradlaugh, Foote, and Ramsey, for the publication of a series of blasphemous libels in the *Freethinker*, was commenced before the preceding case, but had been moved by *certiorari* to the Queen's Bench, where it was opened on April 10 before Lord Chief Justice Coleridge. Messrs. Foote and Ramsey were brought up on a *habeas corpus* in charge of the Governor of Holloway Gaol. Mr. Bradlaugh applied to be tried separately. This application was resisted by the prosecuting counsel, Sir Hardinge Giffard, Q.C., but, after some discussion, was granted by the Judge. Sir Hardinge Giffard, in his opening speech, stated the law as to blasphemy in slightly different terms from those he had used in the case before Mr. Justice North. He took it on this occasion from Hawkin's *Pleas of the Crown*: "All blasphemy against God as denying him or his providence, and of contumacious reproaches to Jesus Christ, all profane scoffing at the Holy Scripture or exposing any part thereof to ridicule or contempt, are offences at common law." The main point, however, to which he had to address himself was to prove Mr. Bradlaugh's responsibility for the publication of the indicted issues. Mr. Bradlaugh, in his opening address to the jury, also confined himself almost entirely to the question of his responsibility and the methods of the

prosecution. It was not his duty to argue whether the matters indicted were blasphemous or not, or to discuss the policy of the blasphemy laws; if it were, he would say "that they were bad laws unfairly revived, doing more mischief to those who revive them than to those whom they are revived against." Sir H. Giffard, however, was most anxious that the jury should appreciate the enormity of the offence for which he was trying to show Mr. Bradlaugh responsible, and in his later speech said, in solemn accents, that the indicted publications were "worse poison to men's souls than even nitro-glycerine to their bodies." The Lord Chief Justice summed up at considerable length in a speech characterised by lucidity, eloquence, and humanity. Assenting to the law of blasphemy as laid down by Starkie, he warned the jury of the necessity for candid and considerate impartiality. When truths which they hallowed were assailed by contumacious blasphemy, he admitted that it was sometimes difficult even for the best of men to preserve a calm, impartial frame of mind, especially when, as in the case of Mr. Bradlaugh, so much social and political disturbance had been created round a man. In concluding, the Lord Chief Justice said that, in his judgment, the libels were blasphemous libels, but Mr. Bradlaugh's complicity in their publication must be brought home to him; if it was not so brought home, then he should be acquitted. The jury, after an hour's consultation, returned a verdict of "Not guilty." The trial occupied three days, and was concluded on April 14.

G. W. Foote and W. J. Ramsey, April 24

On Tuesday, April 24, Messrs. Foote and Ramsey were again brought to the High Court in charge of

the Governor of Holloway Gaol. The particular publications for which they were indicted had all been given in evidence at the trial before Mr. Justice North at the Old Bailey, which had resulted in their conviction and imprisonment. The courtesy and consideration shown to the defendants by Lord Coleridge were in marked contrast to the treatment meted out to them at the Old Bailey. The Lord Chief Justice spoke strongly in condemnation of "the feeling imported into this prosecution," and of the extraordinary methods employed by counsel. The speeches for the defence occupied the whole of the afternoon of the first day; both were admirable—Mr. Foote's, indeed, was masterly; and Lord Coleridge, in dismissing the jury at five o'clock, said that he would sum-up in the morning, and that would give them full opportunity of reflecting upon "the very striking and able speech" they had just heard. On the following morning the Lord Chief Justice, having dealt with the evidence of sales and responsibility (which, as he remarked, was not in dispute), went on to explain the law as to blasphemous libels at very considerable length. As this judgment was made the subject of much controversy, and as it, in fact, opened up a new reading of the law, the course of the argument must be indicated with some fullness. The Lord Chief Justice admonished the jury that it was their duty and his to administer the law conscientiously, whether they thought the law in a particular case was good or bad; the moment Judges and juries went beyond their functions and took upon themselves to find the law not as it is, but as they thought it ought to be, there was an end of all certainty on the subject, and we were left to the

Coleridge, L.C.J.

caprice or prejudice of the moment. Referring to the *dicta* of former Judges, that libels were blasphemous libels because they asperse the truth of Christianity, Lord Coleridge said: "It is no longer true, in the sense it was when these *dicta* were uttered, that Christianity is part of the law of the land. Jews, Nonconformists, and others, were in those times regarded as hardly having civil rights. But now a Jew might be a Lord Chancellor, a Judge on circuit, or sitting in that Court to try that very case; he might be called upon, if the law be really that Christianity is part and parcel of the law of the land, to lay it down as the law to the jury, some of whom might be Jews; and he might be bound to tell them that it was an offence against the law, as blasphemy, to deny that Jesus Christ was the Messiah, a thing which he himself did deny, which Parliament had allowed him to deny,[1] and which it is just as much a part of the law that anyone may deny as it is your right and mine, if we believe it, to assert. Therefore to base the prosecution of an aspersion of the truth of Christianity on the ground that Christianity is, in the sense used by Lord Hale, or Lord Raymond, or Lord Tenterden, the law of the land, is in my judgment a mistake; it is to forget that law grows." Lord Coleridge again quoted Starkie's statement of the law of blasphemy as the correct one, and later in his speech laid it down briefly, but explicitly, that "if the decencies of controversy are

[1] Since the passing of the Oaths Act of 1888, Lord Coleridge's words would apply with equal justice to Atheists. A man who denies the truth of Christianity is legally qualified to become a Judge; and, as a Judge, he might have to try a man under the Blasphemy Laws, or the Act of Will. III., for denying the truth of Christianity!

observed, even the fundamentals of religion may be attacked without the writer being guilty of blasphemy." Notwithstanding that he found the cartoons extremely offensive, the Lord Chief Justice carefully exonerated the defendants from the charge of licentious indecency which had been so freely made against them. In conclusion, he told the jury that, if they thought the publications permissible attacks upon the Christian belief, they must find the defendants not guilty; if they thought they did not "come within the largest and most liberal view of the law as it exists," then, whatever the consequences or their feelings, they must find a verdict of guilty. The jury retired at 12.20 p.m., and, after four-and-a-half hours' consultation, they sent word that they were unable to agree. On the third day (April 26), when the case was called, Sir Hardinge Giffard wished to proceed to a new trial at once; but Lord Coleridge, having heard from the Governor of the Gaol that Mr. Foote was suffering from the effects of his exertions while under the rigours of prison discipline, refused to open the new trial that day. After consulting Mr. Foote's convenience, he postponed the next hearing until the following Tuesday, ordering the Governor to give the prisoners all possible facilities to enable them to prepare their defence. Before Tuesday arrived, however, the prosecutor came to the conclusion that he had had enough, and he applied to the Attorney-General for a *nolle prosequi*. This was granted, and the case ended.

Lord Coleridge's judgment, much to his own surprise,[1]

[1] "I confess I did not appreciate the importance of the occasion. Still less did I foresee the interest which my words would excite....

immediately gave rise to considerable discussion in the legal world. Articles appeared in the Press and the reviews. The June issue of the *Fortnightly Review* contained a most informing contribution by Mr. (now Sir John) Macdonell, in which, reviewing the history of the blasphemy law, he remarked upon the changes it had undergone. It is assumed, said Mr. Macdonell, that Judges sit aloft, undisturbed by what goes on below, and are the exponents of immutable principles; but that is far indeed from the real condition of things. Judges are but human, and, like the rest of humanity, have their prejudices and passions, and "Chief Justice Kenyon upon the Christian Evidences and 'Julian and other apologists,' or Chief Justice Best upon the beauty of the Christian religion, is not a spectacle of unmixed edification." Mr. Macdonell commended the Lord Chief Justice's charge to the jury as being marked "at once by learning and rare liberality of spirit"; and also as giving "a clear rule, perhaps the first clear rule upon this subject expressed from the Bench by an English Judge." He quite agreed that, in the state of the authorities, it was open to adopt the view of the law taken by Lord Coleridge. Is, however, this exposition of the law final? he asked. "Is there no other stage in the development which we have traced?"

Other lawyers of eminence also accepted Lord Coleridge's ruling. Among them was W. Blake Odgers, M.A., LL.D., author of the well-known

from causes with which I need not trouble the public. I was not equal to any careful or sustained effort. This charge, therefore, must not be considered, as put forward by me, as having any pretensions to being a complete or exhaustive discussion of the question handled in it." (Lord Coleridge's Preface to authorised publication of report.)

Digest of the Law of Libel and Slander, who read a paper at the Social Science Congress, held in the autumn, in which he expressed his contentment with the law as it stood. This was not, however, the opinion held by Sir J. F. Stephen, and set forth by him in a forcible article which appeared in the *Fortnightly Review* for March, 1884. He neither agreed with Lord Coleridge nor was he contented. He paid tribute to the sentiment which pervaded the Judge's "justly celebrated summing-up," and the manner in which it was expressed; but he feared that

> its merits may be transferred illogically to the law which it expounds and lays down, and that then a humane and enlightened judgment may tend to perpetuate a bad law by diverting public attention from its defects. The law I regard as essentially and fundamentally bad.

He took exception to the phrase, "the law grows." Statute law, he said, can grow only by the process of parliamentary legislation.

> No lapse of time or change of feeling affects the legal force of any statute. The case law, or common law, grows by the accumulations of decisions in which the Judges are bound to decide according to established precedents and principles, whether they personally agree with them or differ from them.

He declared that, in his opinion,

> a large part of the most serious and most important literature of the day is illegal—that, for instance, every bookseller who sells, everyone who lends to his friend, a copy of Comte's *Positive Philosophy*, or of Renan's *Vie de Jésus*, commits a crime punishable with fine and imprisonment.

While the statute of Will. III. is in force, he said, it could not be argued that the common law was never

so inhuman as to treat the profession of atheism as a crime, or that it has outgrown its cruelty.

> No one can dislike the law as I believe it to be more profoundly than I do; no one can be more firmly convinced of its utter unfitness for these times —if, indeed, it was ever fit for any times. But because I so thoroughly dislike it, I prefer stating it in its natural naked deformity to explaining it away in such a manner as to prolong its existence and give it an air of plausibility and humanity.

Coarse and vulgar people, he argued, will discuss in a coarse and vulgar fashion, and you cannot send a man to gaol for not writing like a scholar and a gentleman when he is neither one nor the other. Effective discussion of subjects in which masses of men are really interested is impossible unless appeals to their passions are allowed. To say "that you may discuss the truth of religion, but that you may not hold up its doctrines to contempt, ridicule, or indignation, is either to take away with one hand what you concede with another, or to confine the discussion to a small and in many ways uninfluential class of persons." Having stated the condition of the law as he believed it to be, Sir J. F. Stephen concluded by expressing the opinion that blasphemy and blasphemous libel should cease to be offences at common law, and that the statute of Will. III. should be repealed.

> Such an abolition would not only secure complete liberty of opinion, but it would prevent the recurrence at irregular intervals of scandalous prosecutions, which have never in any one instance benefited anyone, least of all the cause which they were intended to serve, and which sometimes afford a channel for the gratification of private malice under the cloak of religion.

Brilliant as was Sir J. F. Stephen's reputation as a lawyer, it is Lord Coleridge's view of the law which has been taken rather than his. It is, in fact, more in accordance with the spirit of the times, which has allowed "I dare not" to wait upon "I would." Extremists would doubtless be glad enough to push the law to its limits of severity if they dared. They do not dare to go so far and to punish "the scholar and the gentleman," so they accept the suggestion that it is the *manner*, not the *matter*, which constitutes the crime.

Spencer Bequest, 1887

By his will, dated December 30, 1884, Jonas Spencer, of Old Trafford, near Manchester, bequeathed a sum of £500 to Charles Bradlaugh and George Payne, not by way of trust, but relying upon them to carry out certain objects privately communicated to them by the testator. The testator died on January 3, 1885, and the will was duly proved. The executors, however, declined to pay over the bequest, on the ground that it was a secret trust, and that such trust appeared to be an illegal one. A motion was accordingly made to the Court on behalf of C. Bradlaugh and G. Payne for an order for the payment of the legacy. This was heard on July 5, 1887, before Vice-Chancellor Bristowe, in the Chancery Court of the County Palatine of Lancaster. Counsel for the executors argued that "if the trust was of such a character as to be for the propagation of doctrines which are against all forms of religion, that the trust then would be an illegal one. To establish a college, for example, to teach that the Scriptures were to be disregarded by all sensible men, and were a mere collection of myths and fables, would be illegal."

Vice-Chancellor Bristowe declared that evidence as to the objects of the legacy was admissible. The legatees appealed against this order, and on August 8 Lords Justice Cotton, Bowen, and Fry dismissed the appeal, on the ground that the Court was entitled to inquire into the objects of the legacy, in order to determine whether they were lawful or unlawful. In the following November the case came again before Vice-Chancellor Bristowe, who made an order that the legacy was void.[1]

Religious Prosecutions Abolition Bill, 1889

In 1889 Mr. Bradlaugh introduced a Bill into the House of Commons providing that "after the passing of this Act no criminal proceedings shall be instituted in any Court against any person for schism, heresy, blasphemous libel, blasphemy at common law, or atheism," and that certain Acts named in the Schedule (1 Ed. VI., c. i; 1 Eliz., c. 2; 9 and 10 Will. III., c. 35; 21 Geo. III., c. 49; 6 Geo. IV., c. 4) should be repealed entirely or in part. The second reading of the Bill was moved by Mr. Bradlaugh on April 12, and was seconded by Dr. Hunter. It was opposed by several gentlemen who professed a readiness to tolerate "opinion," but objected to allow the feelings of decent persons to be "shocked or insulted." Reference was made to documents alleged to be blasphemous and of a "most revolting character"; but the speakers, while expressing their firm determination not to allow such things to be legalised, evinced no disposition to call for their prohibition. They would neither permit them nor forbid them.

[1] 57 *Law Times Reports* (N.S.), 519; *National Reformer*, 1887, pp. 58, 104, 106, 298.

One speaker did indeed go so far as to say that, while we punished those who killed the body, the Bill would allow men to murder souls with impunity; under the law of Moses blasphemers were taken out of the camp and stoned to death. The Government Whips were put on as tellers for the "Noes," and the Bill was rejected by 143 to 48. The division lists are of considerable interest even to-day, after a lapse of twenty-three years. Among those who voted for the Bill we find such names as those of Sir Henry Campbell-Bannerman, Henry Asquith, Herbert Gladstone, and R. B. Haldane, all playing leading parts in the Liberal Ministry of 1905. John Morley, who was unable to be present owing to an attack of influenza, which confined him to his bed, wrote to a constituent that, had he been able, he should, "of course," have voted and spoken in support of the Bill. Mr. Bradlaugh, commenting on this attempt to get the law altered, said that he felt it an exceedingly depressing and distressing circumstance that the Bill should have had so little support. Correspondents endeavoured to console him by telling him that such a Bill was not to be carried in a rush; that he must introduce it again and again. But he never had another opportunity, for in less than two years from that time he was in his grave.

The Beswick Bequest, 1903

By the will of John Beswick, executed June 30, 1879, it was directed that £400 be given to trustees on behalf of the Oldham Secular Society at the death of his wife, should she survive him. The legacy was to be devoted to "the spread of Secular principles as the Oldham Society might from time to time direct." Mr. Beswick died in 1899, and on Mrs. Beswick's

death in 1902 the validity of the bequest to the Oldham Secular Society was disputed by the nephew and executor. The case was partly heard in February, 1903, before Vice-Chancellor Sir Charles Hall, who said he would have to inquire into the principles of the Oldham Secular Society, and "if it turned out they were contrary to the principles of English law the bequest would be invalid." The case was adjourned in order that the Attorney-General might be brought in, since "under certain circumstances he might have to administer the bequests in dispute." At the adjourned hearing on March 2 it was contended, on behalf of the Attorney-General, that the bequest was a charitable and legal one; that the Courts had taken the view that not to hold bequests of this kind a society must inculcate principles that were not only subversive of religion, but of morality as well. It was not so in this case, for the principles of the Society were high and the intentions were good. The Vice-Chancellor, however, did not agree with the Attorney-General's reading of the law. What were the principles of the Society? he asked. There was not the least doubt that the Society was intended to be a branch of the National Secular Society. It having been proved to his satisfaction that the principles of the Society were the principles of Secularism, the question was whether that was the kind of Society which the Court recognised as lawfully able to receive a bequest. As had been laid down by Lord Chief Justice Coleridge, a society could be lawfully allowed to exist though holding opinions contrary to Christianity, and yet the law did not recognise such a society as one which could take a bequest for the promotion of those principles. In

Hall, V.-C.

support of this view, the Vice-Chancellor quoted the case of *Briggs* v. *Hartley*,[1] and said that when they had a society like the National Secular Society, which said that "Theology is condemned by reason as superstitious and mischievous, an enemy of progress," etc., it seemed to him absurd that such a society as this could lawfully take a bequest; the bequest, therefore, was invalid. This case illustrates the futility of asserting that any law, or particular reading of the law, is obsolete until it is definitely abrogated. Dr. W. Blake Odgers, in his *Digest of the Law of Libel*,[2] when referring to Vice-Chancellor Shadwell's judgment in the case of *Briggs* v. *Hartley*, quoted with approval the comment of the editors of *Jarman on Wills*, that "this case would probably not be followed." Yet we see that thirteen years later it was cited as authoritative, expressly for the purpose of invalidating a bequest, because it was not "consistent with Christianity."

Jones Bequest (Adelaide), 1907

I may note here a case from South Australia, which shows how this intolerant reading of the law extends to our colonies. A man named William Jones, of Eagle-on-the-Hill, died, leaving property to the value of £11,000. He had been a Freethinker, and had attended meetings of a society called the "Incorporated Body of Freethinkers of South Australia." He bequeathed the annual income of his property to his son and daughter for their lives, and at their death the whole property was to go to the Society in question. The will was contested, and in December, 1907, Chief Justice Sir Samuel Way was asked to decide whether the reversion to the Society was valid

[1] See p. 68.

[2] 2nd. ed. (1890), p. 463.

or not. When the facts were before the Court it turned out that the Society had ceased to exist for ten years before the death of the testator; but had it been extant, the Chief Justice said that the Court would refuse to recognise the legacy. Sir Samuel Way ruled that the doctrines of the Freethinking Society were opposed "not only to Christianity, but to all religion; [and] although the law is tolerant of every form of belief and the discussion of all questions relative to religion, trusts for purposes opposed to Christianity, using the word in its broadest sense, are illegal."[1]

Harry Boulter, 1908

On February 5, 1908, Harry Boulter was brought before Mr. Justice Phillimore at the Central Criminal Court, charged by the Metropolitan Police with uttering a blasphemous libel in the form of speeches delivered at Highbury Corner, Islington, on December 1, 8, and 15, 1907. Mr. Bodkin, for the prosecution, argued that people might discuss religious questions in private, but such discussions must not take place in the public streets. The aid of the law was invoked, he said, "to preserve the standard of outward decency in London." Some of the alleged blasphemous utterances given in evidence by the police were quite unobjectionable insofar as "outward decency" was concerned,[2] some were simply silly,[3] and some were undoubtedly offensive. After hearing the evidence for the prosecution, the case was adjourned to the following day, when Mr. Atherley-Jones, K.C., who was retained by the National Secular

[1] *Melbourne Argus*, December 25, 1907, and January 14, 1908.
[2] "I don't believe Jesus Christ ever lived."
[3] "If I knew a man who believed in Christianity, I would kill him."

Society, addressed the jury for the defence. After sketching the history of the Blasphemy Laws, the counsel said he should start with the bold proposition that the law of blasphemy was obsolete by virtue of a long series of judicial decisions and legislative enactments, and because it was contrary to the spirit of the age. It was a relic of medievalism—a relic of the darkest and cruellest days of religious persecution..... The Christian faith did not need police protection. He did not condone the language to which exception had been taken, but contended that defendant had merely given expression to opinions which had been uttered by others, though in polished periods, with impunity. Mr. Justice Phillimore, in his summing-up, dismissed in a few words the arguments used by the advocate for the defence in his "eloquent and interesting address," saying: "He and the jury were the humble ministers of the law, and bound by their oaths to do justice according to the law, and they had not got to consider whether the law was an old law or a good or a bad law. They had to administer it, thankful that there was an executive power who could temper the rigour of the law if they felt it their duty to apply it, thankful also that in this country there was a legislature which could alter any law which it might be considered expedient to alter." Commenting on the controversies which had arisen as to the application of the law of blasphemy, the learned Judge said that he "should take the law to be as laid down by Lord Coleridge," and went on to observe that "a man was free to think, to say, and to teach that which he pleased about religious matters, though not about morals." If a man made "a coarse and scurrilous attack on doctrines which the majority of

Phillimore, J.

people held to be true, in a public place, where passers-by might have their ears offended and where young people might come, he would render himself amenable to the law of blasphemous libel." The jury, after five minutes' deliberation, found the defendant guilty. Mr. Justice Phillimore then addressed the defendant, telling him that he had taken various circumstances into consideration, and was disposed to deal leniently with him, and not to inflict definite punishment if he would undertake not to continue to make public speeches of a blasphemous nature. He would not ask for a statement then, but released him on bail to come up for judgment on Saturday (February 8), so that he might consult his advisers. On Saturday Mr. Boulter made a statutory affirmation, expressing his regret, and promising that he would not "at any meeting in public attack Christianity or the Scriptures in the language for which I have been found guilty, or in any similar language, or in any language calculated to shock the feelings or outrage the belief of the public." Upon receiving this, Mr. Justice Phillimore bound the defendant over in his own recognisances in £50 to come up for judgment if called upon. Mr. Boulter failed to keep his promise, and in June, 1909, was brought before Mr. Justice Darling, who sentenced him to one month's imprisonment. In October of the same year he was summoned by the London County Council for using improper language on Clapham Common, and fined £10 and costs.

J. A. Jackson, Shanghai, 1911

In February, 1911, Mr. Jackson was brought before Sir Havilland de Sausmarez, Senior Judge of H.B.M. Supreme Court in Shanghai, charged with deriding,

mocking, and insulting the Christian religion. Mr. Jackson had caused to be translated into Chinese part of an article dealing with Christian missions in China, contributed by Sir Hiram Maxim to the *R. P. A. Annual* for 1911, which had already been reprinted in full in the *China Gazette*. A great point seems to have been made of the fact that the translation was illiterate, and a Chinese gentleman was called to give evidence that "his literary taste was very highly offended by the absurd way in which the matter was dressed up." In delivering a lengthy judgment (which fills nearly four columns of the *China Gazette* for February 24), his Lordship said that this was the first case of its kind in China. In England such an offence would be dealt with "under the somewhat antiquely-named crime of blasphemous libel"; in China it was dealt with under an Order in Council of 1904, which punishes any British subject who "publicly derides, mocks, or insults any religion established or observed within China or Korea." This Order was originally made to restrain too zealous missionaries from using offensive language concerning the religion of those whom they desired to convert which might lead to a breach of the peace. The Judge admitted that no missionaries had been prosecuted under this Order in Council, but that there had been cases where it had been used to warn "an over-zealous person who, with too much zeal, has sought to urge his propaganda in an illegal way. The law is the same for all." It is clear, however, that the law is not the same for all; the over-zealous missionary is warned, but the over-zealous opponent of missionaries is brought before the Court without warning. There was no allegation

that any riot or any disturbance of any kind had arisen in consequence of Mr. Jackson's act. "The results have been, fortunately, *nil*," said the Judge; but, he continued, it must be "made perfectly clear to people that they must not do this sort of thing." So he convicted Mr. Jackson, and ordered him to be bound over in his own recognisances for two years, and to pay the costs of the prosecution, which he assessed at $100. Unfortunately for Mr. Jackson, the matter did not end there. He was dismissed from his employment, and has been unable to obtain a fresh position. The fact of his prosecution has so far proved an effectual bar to him. Among the European Christian community he ranks as a criminal, while the equally over-zealous missionary goes on his way rejoicing.

Thomas William Stewart, 1911

Horridge, J.

On December 5 Thomas William Stewart was tried before Mr. Justice Horridge at the West Riding Assizes, held at Leeds, for blasphemous libel uttered in the course of a speech delivered in Victoria Square, Leeds, on August 20. Mr. Stewart conducted his own defence. Mr. Justice Horridge, in his summing-up, followed exactly the line taken by Mr. Justice Phillimore in the Boulter case. "If," he said, "the decencies of controversy were observed, even the fundamentals of religion might be attacked without the writer being guilty of blasphemy. A man was free to speak as he pleased on religious matters, but not as to morals; but when they came to consider whether he had exceeded the limits of fair controversy, they must not neglect to consider the place where he spoke and the persons to whom he spoke. A man was not free in any public place to

use common ridicule on subjects which were sacred." The jury immediately returned a verdict of "Guilty," and Mr. Stewart was sentenced to three months' imprisonment.

John William Gott, 1911

At the same Assize, and immediately after the conviction of Mr. Stewart, John William Gott was indicted for having published a blasphemous libel—namely, a printed pamphlet, entitled *Rib Ticklers, or Questions for Parsons*, of which copies were sold at a meeting addressed by Mr. Stewart in Victoria Square on July 30. The pamphlet had been on sale for some years without objection, but is represented as being "full of language to which exception was taken." The defendant read his defence, in which he said that the pamphlet was intended to amuse and not to give offence. The jury found him "Guilty," and Mr. Justice Horridge, taking a harsh view of the matter, sentenced Mr. Gott to four months' imprisonment.

* * * *

Conclusion

The foregoing record of cases, which, indeed, makes no pretence at being exhaustive, shows that these heresy laws under which men have been burned, tortured, and imprisoned in this England of ours are monstrous in their origin, infamous in their history, and indefensible in their continuance.

There are some who condemn these intolerant laws, but will take no steps to procure their repeal, because they fear they may thereby be supposed to approve, and by their action encourage, the vulgarities of which the defendants in the most recent cases are alleged to have been guilty. But why should we be supposed to

approve, why should we be supposed to encourage, when there is nothing more certain than that, insofar as people are guilty of coarseness and vulgarity in their attacks upon religion, the measure of their grossness is the measure of their failure to influence intelligent opinion? No sensible man can possibly approve of a method of controversy which, apart from other objections, is destined to alienate more persons than it attracts. It is as true to-day as it was in the time of Bartholomew Legate that "heresy is never more dangerous than when served in clean cups and washed dishes." Every controversialist, however, must decide for himself what weapons he shall use in attacking what he believes to be false or mischievous. If he chooses his weapons badly, if he serves his heresy in soiled platters, then it is the cause he espouses which suffers rather than the cause he attacks. Under the present state of the law, Freethinkers to whom coarseness in controversy is extremely repugnant are placed in a most difficult position, and I commend to the notice of the more thoughtful and less prejudiced defenders of the Blasphemy Laws (if any there be!) some wise words written by the President of the London Positivist Society. "As now administered," he says,

> the law is an incentive to bad taste. There is just sufficient danger to give violence of speech the appearance of courage; and courage is a quality universally admired. There is an invidiousness in trying to moderate the violence of those who are open to prosecution. It is impossible for a Freethinker to remonstrate publicly with his less cultured colleague, since the remonstrance might set the law on his track and be used against him on his trial. It is even difficult to remonstrate privately with those

> embittered by the prosecution of their friends. The law, as it is administered, is an engine for silencing, not the advocates of scurrility, but the advocates of moderation.[1]

Coarseness and vulgarity are not confined to the man who attacks religion. It is rife among coarse and vulgar people on the day of St. Valentine. We have endured it in the harlequinade of the pantomime, where drunken pantaloons, dishonest clowns, and old age treated with indignity and contempt, so far from being prosecuted, are a recognised form of entertainment considered suitable for the edification and amusement of young children. Vulgar songs, sometimes most offensive in character, may be heard on the music-hall stage. But these are applauded, while vulgar heretics are sent to prison. In truth, the real remedy for vulgarity and coarseness of every kind, whether on the music-hall stage or in Christian or Freethought literature, is not to be found in the prison, but in the school, through which we should strive to develop an enlightened and refined public opinion.

It is objected that these imprisoned heretics have insulted what Christians most revere. But Christians are hardly in a position to complain of such insults while representatives of their religion heap coarse and scurrilous insults upon Freethinkers as a body, and upon individual men and women whom we revere and esteem. Further, offensiveness in dealing with matters of religion is a crime only when it relates to your own religion. Christians do not feel under any obligation to refrain from offensive attacks upon

[1] S. H. Swinny, *Positivist Review*, January, 1912.

other religions than their own.[1] Missionaries are constantly guilty in this respect,[2] and, indeed, I understand that the missionary exhibition held in London last year, which was a source of so much satisfaction to those who support foreign missions, was, to some extent at least, regarded as a gross travesty and an insult by some of those whose native religions were being thus exploited for the entertainment of the British public.

What exactly is the charge in the recent blasphemy cases, and for what are the men imprisoned? Are they imprisoned for vulgarity or for blasphemy? If they are sent to prison for vulgarity, then they ought to have been indicted for vulgarity. They ought not to be indicted for one offence, and imprisoned for another. They ought not to be indicted for blasphemy, and then have it pretended to the world that they are punished not for the blasphemous opinions they hold, but for the vulgarity with which they expressed them. They ought, moreover, not to be indicted for blasphemy while others who are equally blasphemous go free; and they ought not to be imprisoned for vulgarity while others who are equally vulgar are permitted to continue

[1] "To give a single instance out of a million, look at the attacks which Augustine makes upon Paganism in the *De Civitate Dei*. In one particular passage he ridicules the functions of one particular Roman god in language which, according to modern taste, would be called grossly indecent." (Stephen, *Fortnightly Review*, March, 1884.)

[2] The Rev. Mr. Shoolbred (Baptist) journeyed through the Mugra (Rajpootana), and visited the temple of Kali Devi. Describing this visit, he said that the goddess had "a most hideous and portentous female head, evidently formed of baked clay, with two staring silver eyes set on each side of a huge nose like the beak of an eagle. Much to the amazement and terror of our Mair guide, and one or two others who accompanied us, I took the liberty of pulling the goddess's eagle-like beak, saying: '*Now, if she is a deity, why does she not strike one dead for such an indignity?*'" (*Sunday at Home*, May 28, 1864.)

without molestation or rebuke. The later reading of the blasphemy law, based upon the judgment of Lord Coleridge, which professes to punish the manner rather than the matter, is, in fact, an attempt to classify blasphemy, and sets up a distinction where no essential distinction exists other than that between the educated and the uneducated. It punishes the untrained man for doing, in his unskilled way, what the cultivated literary man may do with perfect impunity. Deeply grateful as we are for the humanity which inspired Lord Coleridge, his judgment did us the worst possible service in helping to keep alive intolerant laws, which are used intolerantly and erratically in places and on occasions when prejudices and passions are aroused.

A repeal of the heresy laws is urgent:

First, because they are a menace to free speech. Wherever freedom of speech or freedom of publication is interfered with, there it is our duty to protest. Free discussion must include the right of ridicule, and it ought not to be permitted to the police that they should have the power to call upon a judge and jury to decide just what amount of ridicule can be accepted as within the so-called "decencies of controversy," and exactly what goes beyond it. It ought not to be possible for offensive burlesque to be condemned as criminal, while offensive irony, which is far more deadly, is allowed to go free. The abolition of the heresy laws would, in the words of Mr. Justice Stephen, "not only secure complete liberty of opinion in these matters [of religion], but would prevent the recurrence at irregular intervals of scandalous prosecutions, which have never in any one instance benefited

anyone, least of all the cause which they were intended to serve, and which sometimes afford a channel for the gratification of private malice under the cloak of religion."

Second, because these criminal laws are the foundation of those civil disabilities under which any one of us may have to suffer. All deeds, contracts, agreements, trusts, or bequests which have for their purpose the promulgation of heretical ideas are void, or voidable. The law may be evaded, or it may not be enforced; but it is there. In the event of a disagreement between husband and wife, if one is religious and the other a heretic, the religious parent could remove the child from the custody of the heretical parent. If parents appoint a heretic as a guardian to their children, religious relatives may have the appointment cancelled.

Third, because this outlawry of the heretic has brought with it a social stigma which is the most insidious, and probably the most far-reaching, evil of all. The condition of social intolerance under which we live induces men to conceal their opinions, and to pretend to be something other than they are; it induces them to become "mere conformers to commonplace or time-servers for truth, whose arguments on all great subjects are meant for their hearers, and are not those which have convinced themselves."[1]

Fear of the social stigma has put a premium on hypocrisy, and has discouraged the open and fearless avowal of unpopular opinion. The interests of public sincerity and public honesty stand far higher than

[1] Mill, *On Liberty*, R. P. A. ed., p. 31.

regard for the "decencies of controversy," which, indeed, would come naturally with the general purification of public morals and improvement in public manners. The decencies of controversy are required quite as much in matters political as in matters religious.

The history of the common law of blasphemy, even as inadequately outlined in these pages, shows that it varies with the temper of the age in which it is administered and of the Judge who has to administer it. Lord Hale, in 1676, said it was the *opinion* which was criminal; so did Mr. Justice North in 1883. Lord Coleridge said it was not the opinion, it was the *manner*, in which it was expressed. Mr. Justice Phillimore and Mr. Justice Horridge also say it is not the opinion; but they say further, that it is not even the manner alone in which the opinion is expressed, it is the *place* in which it is uttered.

The old reading of the law was cruel and intolerant; the new is cruel, intolerant, and pharisaical. The old did not succeed in suppressing heresy; neither will the new. For five hundred years Orthodoxy has persecuted heresy in this country; it has sometimes killed the heretic, but it has never killed the heresy. To-day this persecution is reduced to its most contemptible, most futile form. And yet, despite the fact that every prosecution under these laws makes more open or secret converts to heresy than ever it does to Orthodoxy, Orthodoxy still clings to this barbarous weapon forged in a barbarous age, and resists every attempt at its destruction. Given a little common sense, a little self-respect, and a little appreciation of the maxim that it is good to refrain from doing unto others what you would not wish them to do unto you,

and even the most religious of men would join in the demand for the abolition of these laws. Blasphemy, whether vulgar or refined, should cease to be a crime; and the "ferocious" and "inhuman" law which disgraces the statute-book of Will. III., and which is quoted as declaratory of the common law, should be entirely repealed. All citizens, whatever their belief or no-belief, should stand equal before the law, all owing equal duty to the law, and none suffering disabilities which all do not share.

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There was a time, known as the Golden Age of Freethought, from about 1865 to 1925, when it was thought that the Higher Religions -- Rationalism, Secularism, Deism, Atheism and other "thinking" religions (as opposed to the lower "believing" religions) would be the main religious force in Western Civilization within 50 years. The failure of this great upward religious movement was no fault of the new and elevating religious ideas; these new progressive religious ideals were forcefully suppressed by the political power of the old beliefs.

During this period of rapid intellectual progress there was a large number of Scholarly Scientific, Historical and Liberal Religious works published, many of these old works have disappeared or became extremely scarce. The Bank of Wisdom is looking for these old works to republish in electronic format for preservation and distribution of this information; if you have such old, needed and scarce works please contact the Bank of Wisdom.

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APPENDIX

DRAFT BILL FOR THE REPEAL OF THE BLASPHEMY LAWS.

THE text of the Bill introduced by Mr. Charles Bradlaugh, and rejected on its second reading in the House of Commons on April 12, 1889, is as follows:—

A BILL TO ABOLISH PROSECUTIONS FOR THE EXPRESSION OF OPINION ON MATTERS OF RELIGION

Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. After the *passing of this Act* no criminal proceedings shall be instituted in any Court against any person for schism, heresy, blasphemous libel, blasphemy at common law, or atheism.

2. The Acts contained in the schedule to this Act are hereby repealed to the extent in the third column of that schedule mentioned.

3. Provided that nothing herein shall be deemed to affect the provisions of an Act passed in the nineteenth year of his late Majesty King George the Second, chapter twenty-one, intituled "An Act more effectually to prevent profane cursing and swearing."

4. This Act may be cited as the Religious Prosecutions Abolition Act, 1889.

SCHEDULE.

SESSION AND CHAPTER.	TITLE OR SHORT TITLE.	EXTENT OF REPEAL.
1 Ed. VI., c. 1	An Act against such as shall unreverently speak against the Sacrament of the body and blood of Christ, commonly called the Sacrament of the Altar; and for the receiving thereof in both kinds.	The whole Act.

1 Eliz., c. 2, s. 3.	An Act for the uniformity of Common Prayer and Divine Service in the Church, and the administration of the Sacraments.	In Section 3 the words "shall in any interludes, plays, songs, rhymes, or by other open words, declare or speak anything in the derogation, depraving or despising of the same book, or of anything therein contained, or any part thereof, on."
9 & 10 Will. III., c. 35.	An Act for the more effectual suppressing of blasphemy and profaneness.	The whole Act.
21 Geo. III., c. 49.	An Act for preventing certain abuses and profanations on the Lord's Day.	In preamble the words "under pretence of inquiring into religious doctrines and explaining texts of Holy Scripture by persons unlearned and incompetent to explain the same, etc."; and in Section 1 the words "or for publicly debating on any subject whatsoever upon any part of the Lord's Day called Sunday."
6 Geo. IV., c. 47.	An Act for restricting the punishment of leasing making sedition and blasphemy in Scotland.	So much of the Act as relates to the crime of blasphemy.

AYES.

W. Abraham	P. Esslemont	W. Morrison
R. A. Allison	F. H. Evans	J. Nolan
A. Asher	H. J. Gladstone	J. W. Philipps
H. H. Asquith	Sir J. Goldsmith	E. H. Pickersgill
L. Atherley-Jones	W. C. Gully	J. A. Picton
M. H. Beaufoy	R. B. Haldane	J. B. Roberts
J. G. Biggar	C. Seale-Hayne	F. Roe
T. Burt	A. Illingworth	J. Rowlands
C. Cameron	J. A. Jacoby	Rt. Hon. J. Stansfeld
Rt. Hon. H. Campbell-Bannerman	J. Joicey	J. Stuart
F. A. Channing	H. Labouchere	R. Wallace
Dr. G. B. Clark	H. L. W. Lawson	T. Wayman
H. Cossham	Sir W. Lawson	A. Williams
J. Craig	W. S. B. McLaren	A. B. Winterbotham
W. R. Cremer	W. P. Morgan	J. Woodhead
	A. Morley	

Tellers: C. Bradlaugh, W. A. Hunter.

The Tellers for the Noes were the Government Whips Mr. Akers Douglas and Colonel Walrond.