CT 80

THE LAWS

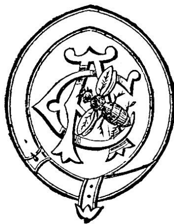
RELATING TO

BLASPHEMY AND HERESY:

AN ADDRESS TO FREETHINKERS.

BY

CHARLES BRADLAUGH.



LONDON:
FREETHOUGHT PUBLISHING COMPANY,
28, STONECUTTER STREET, E.C.

LONDON:

PRINTED BY ANNIE BESANT AND CHARLES BRADLAUGH,

28, STONECUTTER STREET, E.C.

THE LAWS

RELATING TO BLASPHEMY AND HERESY:

AN ADDRESS TO FREETHINKERS

BY CHARLES BRADLAUGH.

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 attempts on the part of the masses to find opinions for themselves. The attempts may be often foolish, but should never be regarded as deserving of punishment. Buckle tells us that it was "Early in the eleventh century the clergy first began systematically to repress independent inquiries by punishing men who attempted to think for themselves" (Compare Sismondi, "Hist. des Français," vol. iv., pp. 145, 146; Neander's "Hist. of the Church," vol. vi., pp. 365, 366; Prescott's "Hist. of Ferdinand and Isabella," vol. i., p. 261, note). Before this, such a policy, as Sismondi justly observes, was not required: "For several centuries the Church had not been troubled by any heresy, the ignorance was too complete, the submission too servile, the faith too blind." As knowledge advanced, the opposition between inquiry and belief became more marked; the Church redoubled her efforts, and at the end of the twelfth century the Popes first formally called on the secular power to punish heretics; and the arliest constitution addressed *inquisitoribus hæræticæ pravitatis* is one by Alexander IV. (Meyer, "Inst. Jud.,"

vol. ii., pp. 554, 556. See also on this movement, Llorente, "Hist. de l'Inquisition," vol. i., p. 125; vol. iv., p. 284.) In 1222 a synod assembled at Oxford caused an apostate to be burned; and this, says Lingard ("Hist. of England," vol. ii., p. 148), "is, I believe, the first instance of capital punishment in England on the ground of religion."

Opinion, however erroneous, or held by however few or many, should never be subject of legal penalty or stigma. J. S. Mill says: "If all mankind, *minus* one, were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind."

Lecky, in his "History of Rationalism," shows us how earnest faith in exclusive salvation tends to create a persecuting spirit:—

"If men believe with an intense and realising faith that their own view of a disputed question is true beyond all possibility of mistake, if they further believe that those who adopt other views will be doomed by the Almighty to an eternity of misery, which, with the same moral disposition, but with a different belief, they would have escaped, these men will, sooner or later, persecute to the full extent of their power. If you speak to them of the physical and mental suffering which persecution produces, or of the sincerity and unselfish heroism of its victims, they will reply that such arguments rest altogether on the inadequacy of your realisation of the doctrine they believe. What suffering that man can inflict can be comparable to the eternal misery of all who embrace the doctrine of the heretic? What claim can human virtues have to our forbearance if the Almighty punishes the mere profession of error as a crime of the deepest turpitude? If you encountered a lunatic, who, in his frenzy, was inflicting on multitudes around him a death of the most prolonged and excruciating agony, would you not feel justified in arresting his career by every means in your power—by taking his life if you could not otherwise attain your object? But if you knew that this man was inflicting not temporal, but eternal death, if he was not a guiltless, though dangerous madman, but one whose conduct you believed to involve the most hideous criminality, would you not act with still less compunction or hesitation?"

In the House of Lords, in the month of May, 1877, Lord

Selborne, in the debate on the Burials Bill, called attention to the existing laws of this country as affecting heresy. It is proposed in this address to state those laws as exactly as possible, and this the more especially as some unthinking persons seem to imagine that the right of free speech in this country has been completely won, and that there is, therefore, no longer any necessity for petitioning parliament either for the repeal of the statutory penalties or for the removal of the common law disabilities and abolition of the common law offence.

A very able legist, to whom I am indebted for some most valuable suggestions, classifies the penalties and disabilities for heresy under the following heads:—

1. The infliction of punishment for the publication of words hostile to the Established Church or religion.

2. Deprivation of civil rights in consequence merely of holding what are called unsound views.

3. Mere social penalties or denial of justice, not by the law but by abuse of the law.

Here the legal positions are alone treated.

In 1857, in the Queen *v.* Thomas Pooley, Mr. Justice Coleridge, at Bodmin, directed the jury that "Publications intended in good faith to propagate opinions on religious subjects, which the person who publishes them regards as true, are not blasphemous merely because their publication is likely to wound the feelings of those who believe such opinions to be false."

This *dictum* of Mr. Justice Coleridge, while wise and humane, is distinctly at variance with the rulings by other judges, who have held that any denial of Christianity is blasphemous and punishable by the common law. The view of Mr. Justice Coleridge is also opposed to the statute 9 and 10 Will. III., c. 32, which statute makes mere denial of the truth of the Bible a blasphemous libel.

In Sir James Fitzjames Stephen's "Digest of the Criminal Law," chap. xvii., p. 97, "Offences Against Religion," he gives the following alternative definitions of blasphemy: "Every publication is said to be blasphemous which contains, 1st, Matter relating to God, Jesus Christ, the Bible, or the Book of Common Prayer, intended to wound the feelings of mankind, or to excite contempt and hatred against the Church by law established, or to promote immorality. Publications intended in good faith to propa-

gate opinions on religious subjects, which the person who publishes them regards as true, are not blasphemous (within the meaning of this definition) merely because their publication is likely to wound the feelings of those who believe such opinions to be false, or because their general adoption might lead, by lawful means, to alterations in the constitution of the Church by law established;" or, 2nd, "a denial of the truth of Christianity in general, or of the existence of God, whether the terms of such publication are decent or otherwise;" and, 3rd, "any contemptuous reviling or ludicrous matter relating to God, Jesus Christ, or the Bible, or the formularies of the Church of England, as by law established, whatever may be the occasion of the publication thereof, and whether the matter intended to be published is, or is not, intended in good faith as an argument against any doctrine or opinion."

Very much would depend on the temper of the judge and jury who tried the case, as to which of the above definitions would be adopted, and it is submitted that this uncertainty ought not to be allowed to continue, for in time of excitement and against an unpopular defendant the common law is susceptible of being interpreted with great harshness.

Sir James Stephen says that there is authority for each of the above views, and that Lord Coleridge allows him to say that the first definition correctly states the law as laid down in the Queen *v.* Pooley, tried at Bodmin Summer Assizes, in 1857, before Mr. Justice Coleridge.

Folkard, "Law of Slander and Libel," chap. 33, p. 593, says (see also "Russell on Crimes," by Prentice, vol. iii., p. 193):—"The first grand offence of speech and writing is, speaking blasphemously against God, or reproachfully concerning religion, with an intent to subvert man's faith in God or to impair his reverence of him;" and on p. 594 he says: "Blasphemy against the Almighty, by denying his being or providence, contumelious reflections upon the life and character of Jesus, and, in general, scoffing, flippant and indecorous remarks and comments upon the Scriptures, are offences against the common law."

The law as laid down by Folkard goes farther than Sir J. F. Stephen's first proposition, and I am inclined to think that a hostile judge would have justification for the harder view.

The cases decided declare that the statutory law on blas-

phemy is intended to supplement the common law, not in any way to annul it or abrogate it. This decision goes against the usual and fairer doctrine that where a statute prescribes a particular mode of proceeding, and affixes a particular punishment to the offence, there, unless there be an express saving of the common law, the only mode of proceeding is under the statute. In the case of the King *v.* Richard Carlile, in 1819, Lord Chief Justice Abbott said (3 Barnewall and Adolphus, p. 162):—

"I consider it to be perfectly clear that the 9 and 10 Will. III., c. 32, did not take away the common law punishment for this offence. Its title is 'An Act for the more effectual suppressing of Blasphemy and Prophaneness,' and the preamble recites the object to be 'for the more effectual suppressing of the said detestable crimes.' And, for this purpose, it imposes certain disabilities on persons convicted, which are of a very high and severe nature. But it appears to me that 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. The very severe nature of these disabilities might well induce them to introduce provisions of the nature contained in the second and third sections of the Act."

And Mr. Justice Bayley, concurring, said:—

"Here *Taylor'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 the punishment at common law."

Mr. Justice Holroyd was of the same opinion, and Mr. Justice Best said:—

"So far from the statute of *William* containing provisions so inconsistent with the common law as to operate as a repeal by implication, as far as it applies to the offence of libel, it seems intended to aid the common law. It is called 'An Act for the more effectual suppression of Blasphemy and Prophaneness.' It would ill deserve that name if it abrogated the common law, inasmuch as, for the first offence, it only operates against those who are in possession of offices, or in expectation of them. The rest of the world might with impunity blaspheme God, and prophane the ordinances and institutions of religion, if the common law punishment is put an end to. But 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. In the age of toleration in which that statute passed, neither Churchmen nor sectarians wished to protect in their infidelity those who disbelieved the Holy Scriptures. On the contrary, all agreed that as the system of morals which regulated their conduct was built on these Scriptures, none were to be trusted with offices who showed they were under no religious responsibility. This Act is not confined to those who libel religion, but

extends to those who, in their most private intercourse by advised conversation admit that they disbelieve the Scriptures. Both the common law and the statute are necessary, the first to guard the morals of this people, the second for the immediate protection of the Government."

The "Commentaries on the Laws of England," by N Broom and E. A. Hadley, devote chapter 5 to offences against religion; but Broom and Hadley are quite wrong in writing (p. 53) as if the enactment of 9 and 10 William III., cap. 32, was the first step of the civil power to interpose for the punishment of blasphemy.

The statute 9 William III., cap. 35, usually known as the 9 and 10 William III., c. 32, is as follows:—

"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 doctrines 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 of this present Parliament assembled, and by the authority of the same, that if any person or persons having been educated in, or at anytime having made profession of, the Christian religion within this realm shal, by writing, printing, teaching, or advised speaking, *deny any one of the persons in the Holy Trinity to be God*, or shal assert or maintain there are more gods than one, or shal deny the Christian religion to be true, or the Holy Scriptures of the Old and New Testament to be of divine authority, and shal, upon indictment or information in any of his Majesties Courts at 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 shal be adjudged incapable and disabled in law to all intents and purposes whatsoever to have or enjoy any office or offices, imployment or imployments, ecclesiastical, civil, or military, or any part in them, or any profit or advantage appertaining to them, or any of them. And if any person or persons so convicted as aforesaid shal at the time of his or their conviction, enjoy or possess any office, place, or imployment, such office, place, or imployment shal be voyd, 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 shal from thenceforth be disabled to sue, prosecute, plead, or use any action or information in any court of law or equity, or to be guardian of any child, or executor or administrator of any person, or capable of any legacie 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 shal be given upon oath before one or more justice or justices of the peace within four days after such words spoken, and the proscution of such offence be within three months after such information.

"Provided also, and be it enacted by the authority aforsesaid, that any person or persons convicted of all, or any, of the aforesaid crime or crimes in manner aforesaid, shal, for the first offence (upon his, her, or their acknowledgment and renunciation of such offence, or erronious 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, any thing in this Act contained to the contrary thereof in any wise notwithstanding."

The words italicised were repealed by the 53 Geo. III., c. 160, but this last-mentioned Act is now treated as a spent statute, and no longer appears in the revised statute book. How far Unitarians are again liable to indictment in consequence of 53rd Geo. III., c. 160, having been erased from the statute book, is a matter for their legal advisers.

The statute 60 Geo. III. and 1 Geo. IV., c. 9, contained various provisions for securing, by recognizances with sureties, the payment of fines inflicted for the publication of blasphemous libels in newspapers and pamphlets. The last prosecution under this statute was "The Attorney General *v.* Bradlaugh," and on this failing, in 1869, the statute itself was repealed by the 32nd and 33rd Vict., c. 24.

Short says, "Law of Libel," p. 310 :—

"The Scotch law is not different from the English law on the subject of blasphemous libels. An Act of 6 Geo. IV., c. 47, after reciting the expediency of making the crime punishable in the same manner as if committed in England, enacted that any person convicted of blasphemy shall be liable to be punished only by fine or imprisonment, or both, at the discretion of the Court ; and that if any person after being so convicted shall offend a second time and be convicted, he may be adjudged, at the discretion of the Court, either to suffer the punishment of fine or imprisonment, or both, or to be banished from the United Kingdom, and all other parts of the Sovereign's dominions, for such term of years as the Court in which such conviction shall take place shall order ; and in case the person so adjudged to be banished shall not depart from the United Kingdom within thirty days after the pronouncing of such sentence, for the purpose of going into banishment, he may be conveyed to such parts out of the dominions of the Sovereign, as the Sovereign, by the advice of the Privy Council, may direct. If the person sentenced to be banished, after the end of forty days from the time the sentence has been pronounced, is at large within

any part of the United Kingdom, or any other part of the Sovereign's dominions, without some lawful cause, before the expiration of the term for which the offender has been adjudged to be banished, every such offender being so at large and being thereof convicted, shall be transported to such place as the Sovereign shall appoint for any term not exceeding fourteen years. This statute still remains in force with the exception of the provisions as to punishment by banishment, which are repealed by 7 Will. IV. and 1 Vict., c. 5."

I shall not trouble here as to the jurisdiction of the Ecclesiastical Courts; the legist I referred to early in this address writes: "So recently as 1842 and 1845 proceedings have been taken in the Ecclesiastical Courts for publishing doctrines contrary to the articles of religion; but it may, I think, be regarded as certain that this jurisdiction, so far as laymen are concerned, is extinct to the extent to which the temporal courts have assumed jurisdiction to punish blasphemy."

The common law is, in every matter, gathered from the dicta of judges in reported cases, and the leading cases are mostly collected in Folkard. The first instance, he says, of a "prosecution for words reflecting on religion," is of one Atwood, convicted in the 15th year of James I. (Croke's Reports, Jacobus, 421), for saying, "the religion now professed was a new religion within fifty years; preaching is but prating and hearing of service more edifying than two hours' preaching." I cannot tell why Folkard calls this the first prosecution for words against religion, as I find several other reported cases earlier in date, the first reported being that of John Wickliffe, 51st Edward III. (1377), and in 6th Richard II. (1383); then the case of William Sautre, 2nd Henry IV. (1400); of William Thorpe, 8th Henry IV. (1407); John Badby, 10th Henry IV. (1409); Sir John Oldcastle, 1st Henry V. (1413). The case of Sautre is the only one specially important here, and this only because of the legal notes on the statutes against heresy of Richard III., c. 5, 2nd Henry IV., c. 15, 1st and 2nd Philip and Mary, c. 6, added to the report. As the 1st Elizabeth, c. 1, s. 6, repealed all the then existing statutes as to heresy, I quote only the final note:—

"So that at this day a person convicted of heresy is liable only to excommunication, and such pains and disabilities as persons standing excommunicated for any other offence (which, however, are not very light), for if the excommunicate person be not reconciled to Holy Church within forty days, he is liable to be taken by the civil powers

under the writ *de excommunicato capiendo*, and to be *imprisoned* until he be so reconciled."—(Cobbett's "State Trials," Vol. i., p. 176.)

This, apparently, might still be enforced, and Corner's "Crown Practice" provides for the issue and execution of the writ *de excommunicato capiendo*.

The next case reported in Cobbett's "State Trials," vol. v., 801, is of proceedings in the House of Commons against James Nayler for blasphemy. James Nayler is incorrectly called a Quaker, but seems to have been a religious madman who had been formerly an officer under Cromwell. His case is only important here from the language of the Lord Commissioner Whitelocke in giving judgment. It was sought to put Nayler to death, and Whitelocke, who gave judgment against this punishment, 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." And Gregorius Turonensis, in his appendix, Cap. 51, has, 'Liberare poteras de blasphemia hanc causam.' From whence the French word *Blasme* (now written *blâme*) and our English *Blame*. Spelman says it is 'increpare, vel convitiis aliquam afficere.' Paræus derives it from *βλάπτω τὴν φαμὴν*, *i.e.* læsio famæ. And this in relation to men as well as to God." The Lord Commissioner Whitelocke further said:—

"It is held that the Ordinance of the Long Parliament concerning blasphemy is not now in force, and I do agree to that opinion; nor do I know any other law in that case. That ordinance cost much debate, and therein was a great diversity of judgments; and so I presume we shall again find it, whensoever these matters shall fall under consideration. The objection was very weightily urged: That there is a law in force against heresy, as appear by the writ *De Hæretico comburendo*, which (they say) was by the Common Law; and that blasphemy is an heresy within that law, by which he may be put to death. This objection may receive a clear answer.

"I am not of opinion, that heresy was punishable by the Common Law with death, notwithstanding the writ *De Hæretico comburendo* be in the Register; for it is not in the ancient manuscript registers, which, indeed, is a true part and demonstration of the Common Law.

"But this writ was of later date, and brought in by Arundel, Archbishop of Canterbury, in Henry IV.'s time, for the punishment and suppression of Lollards, who were good Christians, and of the same profession that we are. But the bloody practice of that prelate did not work with the effect he intended, as appears (blessed be God) at this day. Yet, if it should be admitted that heresy was punishable by death at the Common Law, that cannot include blasphemy.

"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. Heresy was to be declared in particular, and by the four first General Councils. But the blasphemy in this Vote is general; and I do not find it reckoned in those Councils for heresy.

"I remember a case in our Book of Henry VII., where the bishop committed one to prison for a heretic, and the heresy was denying 'that tythes were due to his parson.' This at that time was a very great heresy, but now I believe some are inclinable to think that to say 'tythes are due to the parson,' is a kind of heresy.

"So in this case, that which now may be accounted blasphemy, and the offender to be put to death for it, in another age the contrary may be esteemed blasphemy, and the offender likewise put to death for that."

The writ *de heretico comburendo* was abolished in 1677 by the following statute of 29 Charles II., cap. 9, which I quote entire, because of the importance of its final clause—

"An Act for takeing away the Writt De Heretico cumburendo. Bee it enacted by the Kings most excellent Majestie by and with the advice and consent of the lords spirituall and temporall and commons in this present Parlyament assembled and by the authoritie of the same that the writt commonly called breve de heretico comburendo with all processe and proceedings thereupon in order to the executeing such writt or following or depending thereupon and all punishment by death in pursuance of any ecclesiasticall censures be from henceforth utterly taken away and abolished any law statute canon constitution custome or usage to the contrary heretofore or now in force in any wise notwithstanding.

"Provided alwayes 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 any ecclesiasticall courts in cases of atheisme blasphemy heresie or schisme and other damnable doctrines and opinions but that they may proceede to punish the same according to his Majesties ecclesiasticall lawes by excommunication deprivation degradation and other ecclesiasticall censures not extending to death in such sort and noe other as they might have done before the makeing of this Act anything in this law contained to the contrary in any wise notwithstanding."

The Ordinance of the Long Parliament referred to by the Lord Commissioner Whitelocke, was dated 2nd May, 1648, and ordains, that whoever should maintain any one of the several opinions (there called Errors), unless he would abjure the same, or after abjuration shall relapse, should be guilty of felony without benefit of clergy. While it is clear that this ordinance ceased, the statute book does not enable me to trace its repeal, nor do I know how it was determined.

Sir James Fitzjames Stephen, under the head "Heresies," says:—

"Every person who is guilty of atheism, blasphemy, heresy, schism,

or any other damnable doctrine or opinion *(not punishable at common law)* may, upon conviction thereof before a competent ecclesiastical court, be directed to recant the same and to do penance therefor, and to be excommunicated and imprisoned for such term, not exceeding six months, as the Court pronouncing the sentence of excommunication may direct."

Under the head "Denying Truth of Christianity," &c., Stephen says:—

"Everyone commits a misdemeanour and upon conviction thereof is liable to the punishments hereinbefore mentioned, who having been educated in, or at any time having made profession of, the Christian religion within this realm, by writing, printing, teaching, or advised speaking, denies the Christian religion to be true, or the holy scriptures of the Old and New Testament to be of Divine authority."

Folkard says in Rex *v.* Taylor the defendant was convicted upon an information for saying that "Jesus Christ was a bastard and whoremaster; religion was a cheat; and that he neither feared God, the devil, nor man." Hale, C.J., observed: "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, and, therefore, punishable in this (*i.e.*, 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." It seems clear that this poor man was a raving lunatic. He claimed to be Christ's younger brother.

To quote once more my legist friend:—

"If we consider the observations of Lord Justice Hale, we shall be led to doubt whether a judgment was ever pronounced in a civilized country, by an eminent man, which contrived to pack so much nonsense in so little space. His observation that Christianity is part of the law of England, introduced a legal conundrum of which generations of lawyers have gravely tried to find the meaning, though, hitherto, without any success. What follows is an amusing *non-sequitur*. If Christianity is part of the law, surely, like all other parts of the law, it may be spoken against. We have not yet got to the point that it is a crime to object to a bad law, or propose a good one. When the learned judge tells us that to say religion is a cheat is to dissolve all the obligations of society, he omits a few rather essential links. It contains no fewer than five assumptions. First of all, he assumes that no society can exist which has no religion. Secondly, he assumes that no society can exist which does not profess the Christian religion. Thirdly, he forgets that before society can be dissolved, religion must first be dissolved; he assumes that if anyone expresses his opinion that religion ought to be dissolved, that is the same thing as actually persuading everyone to adopt his views. A bedlamist blows the trumpet

and forthwith the whole edifice of religion falls to the ground. Every one of these assumptions is contradicted by every-day experience, and yet it is upon such a tissue of puerile and unproved assumptions that the criminal court in England have assumed jurisdiction to punish any person who contradicts the generally received opinions on religion. It is worthy of notice that the excellent man who simply repeated on the Bench the nonsense he had been taught in school, was a firm believer in witchcraft, and quotes both Scripture and legislators in favour of the doctrine that we ought not to suffer a witch to live. In 1664, Sir Matthew Hale sentenced two old women to be hung in Suffolk. He said the reality of witchcraft could not be disputed, 'for, first, the Scriptures had affirmed so much; and, secondly, the wisdom of all nations had provided laws against such persons, which is an argument of their confidence of such a crime (Lecky, I., p. 110)."

"In the cases of Clendon and Hall," says Folkard, "the defendants were convicted of having published libellous reflections on the Trinity; and it does not seem to have been doubted in those cases that they were offences at common law."

The note on these cases in Strange's "Reports" is very brief, and the point which Folkard says was not doubted, does not seem to have been argued.

"In the case of Rex *v.* Woolston, the defendant had been convicted of publishing five libels, wherein the miracles of Jesus Christ were turned into ridicule, and his life and conversation exposed and vilified. It was moved in arrest of judgment that the offence was not punishable in the temporal courts; but the Court declared they would not suffer it to be debated whether to write against Christianity in general was not an offence of temporal cognisance. It was contended on the part of the defendant, that the intent of the book was merely to show that the miracles of Jesus were not to be taken in a literal but in an allegorical sense, and, therefore that the book could not be considered as aimed at Christianity in general, but merely as attacking one proof of the divine mission. But the Court was of opinion that the attacking Christianity in that way was attempting to destroy the very foundation of it; and though there were professions in the book to the effect that the design of it was to establish Christianity upon a true foundation, by considering those narratives in Scripture as emblematical and prophetical, yet that such professions could not be credited; and that the rule was *allegatio contra factum non est admittenda.* And the Court, in declaring that they would not suffer it to be debated whether writing against Christianity in general was

a temporal offence, devised that it might be noticed that they laid their stress upon the term *general*, and did not intend to include disputes between learned men upon particular controverted points; and Lord Raymond, C.J., in delivering the opinion of the Court, said, 'I would have it taken notice of, that we do not meddle with any differences in opinion, and that we interfere only where the very root of Christianity is struck at;' and with him agreed the whole Court."

This case is reported in Strange, 834, Fitzgibbon, 64, and Barnard, 162; but the difficulty is that a judge trying the question, say on Colenso's "Commentary on the Pentateuch," might hold that in parts of this you had the very root of Christianity assailed.

The following is the report of Woolston's case, given in Fitzgibbon Pasch, 2 George II., B. R. page 64:—

"The defendant having published several discourses on the Miracles of Christ, in which he maintained that the same are not to be taken in a literal sense, but that the whole relation of the life and miracles of our Lord Christ in the New Testament is but an allegory, several informations were brought against him, in which it was laid that the defendant published those discourses with an intent to vilify and subvert the Christian religion; and he, being found guilty, Mr. Morley moved in arrest of judgment, that those discourses did not amount to a libel upon Christianity, since the Scriptures are not denied, but construed and taken in a different meaning from that they are usually understood in; and by the same reason that making such a construction, should be punishable by the common law, so it would have been punishable by the common law before the Reformation, to have taken the doctrine of Transubstantiation allegorically; now as the common law has continued the same since the Reformation that it was before, whatever was punishable by it before, continues so likewise since the Reformation; so that this being not now a crime by the common law, nor was it before the Reformation, when it was held literally a part of Christianity; neither is the allegory made by the defendant, by the same reason, a crime punishable by the common law; so that if this be a crime, it must be of ecclesiastical conusance; and it may be of a very dangerous tendency to encourage prosecutions of this nature in the temporal courts, since it may give occasion to the carrying on of prosecutions for a meer difference in opinion, which is tolerated by law: he urged that the defendant would have been proceeded against upon the Statute 10, W. III., cap. 32, by which, for denying Christianity, the first offence incapacitates the offender to hold any office, &c., so that this Act having chalk'd out a special method of punishment, and being made for the benefit of the subject, the defendant should be proceeded against according to its direction; then he offered, that though it should be admitted, the discourses did amount to a libel upon Christianity, yet the common law has not cognisance of such an offence; but it being opposed, that this should now be made a

question, it having been settled in Taylor's case, 1 Vent., 293, and in other instances 'twas answered by—

"Raymond, Chief Justice: Christianity in general is parcel of the common law of England, and therefore to be protected by it; now whatever strikes at the very root of Christianity, tends manifestly to a dissolution of the civil government, and so was the opinion of my Lord Hale in Taylor's case; so that to say an attempt to subvert the established religion is not punishable by those laws upon which it is established is an absurdity; if this were an entirely new case, I should not think it a proper question to be made; I would have it taken notice of, that we do not meddle with any differences in opinion, and that we interfere only where the very root of Christianity is struck at, as it plainly is by this allegorical scheme, the New Testament, and the whole relation of the life and miracles of Christ being denied; and who can find this allegory.

"As to the 9 and 10 W. III., 'Tis true, where a statute introduces a new law, and inflicts a new punishment, it must be followed; but when an Act of Parliament only inflicts a new punishment for an offence at common law, it remains an offence still punishable as it was before the Act; so 'tis in a case of forgery, which notwithstanding the 5 Eliz. remains still punishable, as it was before the statute; and with him agreed the whole Court."

The next case in Folkard is that of Jacob Ilive. "An information was filed against him by the Attorney-General (afterwards the famous Lord Camden), for publishing a profane and blasphemous libel, tending to vilify and subvert the Christian religion, and to blaspheme our Saviour Jesus Christ, to cause his divinity to be denied, to represent him as an impostor, to scandalize, ridicule, and bring into contempt his most holy life and doctrine, and to cause the truth of the Christian religion to be disbelieved and totally rejected, by representing the same as spurious and chimerical, and a piece of forgery and priestcraft." This case is to be found in the reports of Hilary Term, 1756.

"In the case of Peter Annett an information was exhibited against him in Michaelmas Term, 1763, by the Attorney-General, for a certain malignant, profane, and blasphemous libel, entitled 'The Free Inquirer,' 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 imposter, and that the sacred truths and miracles recorded and set forth in the Pentateuch were impositions 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. Being convicted on this information, the defendant was sentenced by the Court of King's Bench to one month's imprisonment in Newgate, to stand twice in the pillory (once at Charing Cross and once at the Royal Exchange), then to be confined in Bridewell gaol, and kept to hard labour for one year, and to find security for his good behaviour for the remainder of his life." The punishment of pillory was finally abolished on 30th June, 1837, by 1st Victoria, cap. 23, having been already swept away in many cases by 56 Geo. III, cap. 138.

"In the case of John Wilkes, an information was exhibited against him in Hilary Term, 1763, by the Attorney-General (Sir Fletcher Norton), for publishing an obscene and impious libel, tending to vitiate and corrupt the minds and manners of His Majesty's subjects; to introduce a total contempt of religion, modesty, and virtue; to *blaspheme* Almighty God; and to *ridicule* our Saviour and the Christian religion" (see Jesse's "Life of George III.," vol. i., p. 210; Phillimore's "George III.," vol. i., p. 374).

"In The King *v.* Williams the defendant was (tried at Guildhall, before Lord Chief Justice Kenyon, and) convicted of having published a libel, intituled, 'Paine's Age of Reason,' which denied the authority of the Old and New Testament, and asserted that reason was the only rule by which the conduct of men ought to be guided, and ridiculed the prophets, Jesus Christ, his disciples and the Scriptures. Upon being brought up for sentence, Mr. Justice Ashurst observed that such doctrines were an offence not only against God, but against law and government, from their direct tendency to dissolve all the bonds and obligations of civil society; and upon that ground it was that the Christian religion constituted part of the law of the land; that if the name of our Redeemer was suffered to be traduced, and his holy religion treated with contempt, the solemnity of an oath, on which the due administration of justice depended, would be destroyed, and the law would be stripped of one of its principal sanctions—the dread of future punishment." If this ruling be correct, it would involve that all argument against eternal torment would be indictable.

The case of King *v.* Williams is reported in 26 Howell's "State Trials," p. 664, and is specially noteworthy for the brave defence made by the counsel for the prisoner, Mr. Stewart Kyd, who was frequently interrupted by Lord Kenyon, but who persevered most gallantly. Mr. Erskine, who was counsel for the prosecution, said: "Every man has a right to investigate, with decency, controversial points of the Christian religion; but no man, consistently with a law which only exists under its sanction, has a right to deny its very existence," and he contended that "the law of England does not permit the reasonings of Deists against the existence of Christianity itself." Mr. Kyd, in the course of his defence, examined the words "blasphemously, impiously, and profanely," used in the indictment. He said, "Blasphemously" is derived from two Greek words, which signify, "to hurt, to injure, or to wound, the fame, character, reputation, or good opinion." "Profanely" is derived more immediately from a Latin word, which signifies "a sacred place, a place set apart for the local worship of some divinity; a place where the favoured votaries may be received to a more immediate communication with the object of their adoration: in the language of ancient legends, a fane." "Profane," when applied to place, comprehends all that is not thus considered as holy ground: when applied to men it is considered as a term of reproach; implying that they are unworthy to approach the sacred spot; unworthy to have communication with the favoured votaries: to do anything "profanely," therefore, is to do it "in a manner, or with an intention, to offend that which is esteemed holy;" or, as all subordinate divinities are now banished from hence, "in a manner, or with an intention to offend the one supreme God." "Impiously" is derived from the Latin word *pius*, which expresses the attachment, affection, respect, or reverence which is due from man to some other being to whom he stands in the relation of an inferior; as between a son and a father, it expresses filial affection; as between man and the Deity, it expresses the constant and habitual reverence due from the former to the latter; to do anything "impiously," therefore, is to do it "in a manner or with an intention inconsistent with that reverence which is due from a man to his Creator." It is plain, therefore, that according to the different systems of religious opinions which men embrace, they will

apply the epithets of blasphemous, impious, and profane reciprocally to each other, and frequently, I will venture to say, with equal justice."

"In the case of the King *v.* Eaton, in Easter Term, 1812, the defendant was convicted upon an information filed by Sir Vicary Gibbs, the Attorney-General, 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. Upon being brought up to receive judgment, though his counsel addressed the Court in mitigation of punishment, no exception was taken to the legality or propriety of the conviction. It appears, therefore, to have been long ago settled that blasphemy against the Deity in general, or an attack upon the Christian religion individually, for the purpose of exposing its doctrines to contempt and ridicule, is indictable and punishable as a temporal offence at common law. The same doctrine has been fully recognised in several subsequent cases. [The King *v.* Eaton is reported in 31 Howell's "State Trials," 927. Lord Ellenborough, in summing up, 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 truth of the book which is the foundation of our faith, has never been permitted." Eaton was sentenced to the pillory and to eighteen months' imprisonment.] In Rex *v.* Carlile, where the defendant, having been convicted of publishing two blasphemous libels, was in Mich. 7, 60 Geo. III., sentenced to pay a fine of £1500, to be imprisoned for three years, and to find sureties for his good behaviour for the term of his life.

"Also, in the case of Rex *v.* Waddington, and in Rex *v.* Taylor, who was sentenced to pay a fine, and to suffer one year's imprisonment, for a blasphemous discourse. And in a still more recent case, it was held to be an indictable offence at common law to publish a blasphemous libel of and concerning the Old Testament, and Lord Denman, Chief Justice, directed the jury that if they thought the publication tended to question or cast disgrace upon the Old Testament, it was a libel."

The King *against* Waddington is reported in Barnewall and Creswell, vol. i., p. 26, and was argued 14th November, 1822, as follows :—

"This was an information by the Attorney-General against the defen-

dant for a blasphemous libel. The effect of the libel set out in the information was to impugn the authenticity of the Scriptures; and one part of it stated that Jesus Christ was an impostor and a murderer in principle, and a fanatic. The defendant was tried at the Middlesex sittings after last Trinity Term and convicted. Before the verdict was pronounced, one of the jurymen asked the Lord Chief Justice whether a work which denied the divinity of our Saviour was a libel. The Lord Chief Justice answered that a work speaking of Jesus Christ in the language used in the publication in question was a libel, Christianity being a part of the law of the land. The defendant, in person, now moved for a new trial, and urged that the Lord Chief Justice had misdirected the jury by stating that any publication in which the divinity of Jesus Christ was denied was an unlawful libel; and he argued, that since the 53 Geo. III., c. 160, was passed, the denying one of the persons of the Trinity to be God was no offence, and, consequently, that a publication in support of such a position was not a libel.

"Abbott, C.J.—I told the jury that any publication in which our Saviour was spoken of in the language used in the publication for which the defendant was prosecuted was a libel. I have no doubt whatever that it is a libel to publish that our Saviour was an impostor and a murderer in principle.

"Bayley, J.—It appears to me that the direction of my Lord Chief Justice was perfectly right. The 53 Geo. iii., c. 160, removes the penalties imposed by certain statutes referred to in the Act, and leaves the common law as it stood before. There cannot be any doubt that a work which does not merely deny the Godhead of Jesus Christ, but which states him to be an impostor and a murderer in principle was, at Common Law, and still is, a libel.

"Holroyd, J.—I have no doubt whatever that any publication in which our Saviour is spoken of in the language used in the work which was the subject of this prosecution is a libel. The direction of the Lord Chief Justice was therefore right in point of law, and there is no ground for a new trial.

"Best, J.—My Lord Chief Justice reports to us that he told the jury that it was an indictable offence to speak of Jesus Christ in the manner that he is spoken of in the publication for which this defendant is indicted. I cannot admit of the least doubt that this direction was correct. The 53 Geo. III., c. 160, has made no alteration in the Common Law relative to libel. If previous to the passing of that statute, it would have been a libel to deny in any printed work the divinity of the second person in the Trinity, the same publication would be a libel now. The 53 Geo. III., c. 160, as its title expresses, is an Act to relieve persons who impugn the doctrine of the Trinity from certain penalties. If we look at the body of the Act to see from what penalties such persons are relieved, we find that they are the penalties from which the 1 Wm. and Mary, sec. 1, c. 18, exempted all Protestant Dissenters, except such as denied the Trinity, and the penalties or disabilities which the 9 and 10 Wm. III. imposed on those who denied the Trinity. The 1 Wm. and Mary, sec. 1, c. 18, is, as it has been usually called, an Act of Toleration, or one which allows Dissenters to worship God in the mode that is agreeable to their religious opinions, and exempts them from punishment for non-attendance at the Established Church, and non-conformity to its rites. The legislature in passing that Act only thought of easing the consciences of Dissenters,

and not of allowing them to attempt to weaken the faith of the members of the Church. The 9 and 10 Wm. III. was to give security to the Government, by rendering men incapable of office who entertained opinions hostile to the established religion. The only penalty imposed by that statute is exclusion from office; and that penalty is incurred by any manifestations of the dangerous opinion, without proof of intention in the person entertaining it either to induce others to be of that opinion, or in any manner to disturb persons of a different persuasion.

"This statute rested on the principle of the Test Laws, and did not interfere with the common law relative to blasphemous libels. 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."

In the case of Rex *v.* Burdett, 4 Barnewall and Alderson, p. 132, Mr. Justice Best said: "Every man may fearlessly advance any new doctrines, provided he does so with proper respect to the religion and government of the country."

The more recent case above referred to by Folkard is the case of the Queen *v.* Henry Hetherington, reported in 5 Jurist, p. 330 (Hilary Term, 1841). Mr. Thomas, counsel for Henry Hetherington, moved in arrest of judgment or for a new trial—

"L. C. J. Denman.—You are too late to move for a new trial; the practice is to move within the first four days of Term, and then to postpone the argument until the party is brought up for judgment.

"Mr. Thomas then, in arrest of judgment.—The offence laid in the indictment is not punishable at Common Law. The indictment sets out a libel only upon the Old Testament, and there is no case of an indictment for a publication in discussing matters contained in the Old Testament. All the cases of indictment for blasphemy against the Holy Scriptures are for matters directed against Christianity and religion together. The first case which is said to have decided that Christianity is part and parcel of the Common Law of England is in the Year Book (34 Hen. VI., p. 40); but that opinion seems to be founded on a mistranslation [The case was *quare impedit* against the Bishop of Lincoln; and the passage, which is obscure, is as follows:—"Priast. Atielx Leis que ils de Saint Eglise ont en ancien Scripture, covient a nous a donner credence; car ceo Common Ley sur quel touts mannieres Leis sont fondes. Et anxy, Sir, nous sumus obliges de connotre lour Ley de Saint Eglise; et semblablement ils sont obliges de connotre nostre Ley." It may be thus translated:—"As to such laws as they of the Holy Church have in ancient Scripture, it is proper for us to give credence; for that

[as it were] common law, on which all sorts [of] laws are founded. And thus, Sir, we are obliged to take cognisance of their law of Holy Church; and likewise they are obliged to take the same cognisance of our law." Wingate evidently grounds his third maxim on the above passage: "To such lawes as have warrant in Holy Scripture, our law giveth credence, *et contra*." Maximes, p. 6]; and all the cases down to R. *v.* Woolston, 2 Str. 834, S. C. more fully in Fitzg. 64, proceed upon that mistranslation. R. *v.* Taylor (3 Keb. 607; 1 Ventr. 293), in which Hale, C.J., said 'The Christian religion is a part and parcel of the laws of England,' is a leading authority; but what reliance can be placed on the opinion of that judge on this matter, seeing he held witchcraft punishable at common law? (6 How. "St. Tr.," 701, 702). [Lord Chief Justice Denman.—Hale, C.B., refers to the enactments of the statute law, and expressly to the Act of Parliament "which," he says, "hath provided punishments proportionable to the quality of the offence."] Besides, at the time of the case referred to, all witnesses must have been sworn on the Bible or New Testament, but that is now altered; and, therefore, the reason for holding that an attack upon Christianity would dissolve and weaken the bonds of society, viz., by overthrowing or weakening the confidence of testimony given in courts of justice, no longer exists.

"Lord Chief Justice Denman.—There is no ground for granting a rule in this case. Though in most of the 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 indictment 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 it without saying that there is no mode by which religion holds society together but 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.—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.—The alleged mistranslation of a passage in the Year Book referred to is not material, because there are other abundant authorities; and 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 Testament are not so intimately con nected, 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

"Rule refused."

The following are the notes of W. C. Townsend, Recorder of Macclesfield, appended to his extremely imperfect report of the trial of Mr. Moxon, who, on June 23, 1841, was, on the prosecution of Henry Hetherington, found guilty of blasphemy in publishing Shelley's Works, and I give these notes here as bearing upon the ruling in Taylor's case:—

"Archbishop Whately, in his preface to the 'Elements of Rhetoric,' has cited a declaration of the highest legal authority, that Christianity is part of the law of the land, and, consequently, any one who impugns it is liable to prosecution. What is the precise meaning of the above legal maxim I do not profess to determine, having never met with any one who could explain it to me, but evidently the mere circumstance that we have religion by law established does not of itself imply the illegality of arguing against that religion. It seems difficult to render more intelligible a maxim which has perplexed so learned a critic. Christianity was pronounced to be part of the common law, in contradistinction to the ecclesiastical law, for the purpose of proving that the temporal courts, as well as the courts spiritual, had jurisdiction over offences against it. Blasphemies against God and religion are properly cognizable by the law of the land, as they disturb the foundations on which the peace and good order of society rest, root up the principle of positive laws and penal restraints, and remove the chief sanctions for truth, without which no question of property could be decided, and no criminal brought to justice. Christianity is part of the common law as its root and branch, its mainstay and pillar—as much a component part of that law as the government and maintenance of social order. The inference of the learned archbishop seems scarcely accurate, that all who impugn this part of the law must be prosecuted. It does not follow, because Christianity is part of the law of England, that every one who impugns it is liable to prosecution. The manner of and motives for the assault are the true tests and criteria. Scoffing, flippant, railing comments, not serious arguments, are considered offences at common law, and justly punished, because they shock the pious no less than deprave the ignorant and young. The law is clearly laid down in 4 Blackstone, 59; 1 Hawkins's 'Pleas of the Crown,' c. 5; 1 Viner's Abrid., p. 293; 2 Strange, p. 834; and 1 Ventris, 293. We may argue against the government by kings, lords, and commons, but must not slander and revile them.

"The meaning of Chief Justice Hale cannot be expressed more plainly than in his own words. An information was exhibited against one Taylor, for uttering blasphemous expressions too horrible to repeat. Hale, C. J., observed that:

"'Such kind of wicked, blasphemous words were not only an offence to God and religion, but a crime against the laws, state, and government, and, therefore, punishable in the Court of King's Bench. For to say religion is a cheat, is to subvert all those obligations whereby civil society is preserved; that Christianity is part of the laws of England, and to *reproach* the Christian religion is to speak in subversion of the law.'

"To remove all possibility of further doubt the Commissioners on Criminal Law have thus clearly explained their sense of the celebrated passage:—

"'The meaning of the expression used by Lord Hale that "Christianity was parcel of the laws of England," though often cited in subsequent cases, has, we think, been much misunderstood. It appears to us that the expression can only mean, either that as a great part of the securities of our legal system consist of judicial and official oaths sworn upon the gospels, Christianity is closely interwoven with our municipal law; or that the laws of England, like all municipal laws of a Christian country, must, on principles of general jurisprudence, be subservient to the positive rules of Christianity. In this sense Christianity may justly be said to be incorporated with the law of England, so as to form parcel of it; and it was probably in this sense that Lord Hale intended the expression should be understood. At all events, in whatsoever sense the expression is to be understood, it does not appear to us to supply any reason in favour of the rule that arguments may not be used against it; for it is not criminal to speak or write either against the common law of England generally or against particular portions of it, provided it be not done in such a manner as to endanger the public peace by exciting forcible resistance, so that the statement that Christianity is parcel of the law of England, which has been so often urged in justification of laws against blasphemy, however true it may be as a general proposition, certainly furnishes no additional argument for the propriety of such laws.'

"If blasphemy means a railing accusation, then it is, and ought to be, forbidden.

"The following judicious opinion of the Commissioners on Criminal Law, in their sixth report, will, we think, meet with general assent:—

"'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 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 in this most important of all subjects, and who, arriving in his own convictions of scepticism or even unbelief, has gravely and decorously submitted his 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.' "

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. Shelley's poems were then held to be blasphemous, and as the law stands could be again indicted to-day, yet one may certainly affirm that public opinion would now unanimously ridicule any such indictment.

It is a curious illustration of the growth of public opinion that the present Lord Blackburn on delivering judgment in the Queen *v.* Hicklin, said: "I hope I may not be understood to agree with what the jury found, that the publication of 'Queen Mab' was sufficient to make it an indictable offence."

The most modern amongst the reported cases are found in Scotland, Paterson's case, 1 Brown, 627, and Robinson's case, 1 Brown, 643. Paterson's case is thus summarised by Shortt, p. 309:—

"A person accused of 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, and devised, contrived, and intended to asperse, vilify, ridicule, and bring them into contempt, was not allowed, 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 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 those 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 of which the jury will judge."

In charging the jury, his lordship thus stated the law :—

"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 it is yours 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 contained 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. This 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."

All deeds, contracts, agreements, trusts or bequests, which are for the purpose of promoting the utterance or publication of blasphemy or heresy are void or voidable. A limited liability company for a hall avowedly for anti-Christian lectures would be an illegal undertaking. A trustee shown to entertain heretical opinions may be removed from his trusteeship if that trusteeship involves the guardianship or education of any child, and if the child be made a ward of court; a legacy left avowedly for the propagation of views legally definable as blasphemous or heretical will be void. The only course for any one desirous by bequest to aid Freethought is to leave the money, without restriction in words, to an individual deemed reliable, but there is then no remedy if the legatee misapplies the funds. In the case of Bradlaugh *v.* Edwards, an action brought for arresting the plaintiff, when he had only uttered the words, "Friends, I am about to address you on the Bible," Lord Chief Justice Erle, in the Court of Common Pleas, declared that a wrongful imprisonment, which might have prevented the intended utterance of heretical views, was not *a tort* for which the plaintiff could recover any damages.

In the case of Cowan *v.* Milbourn, on appeal from the Court of Passage at Liverpool, it was held by the Court of Exchequer that,—

> "The delivery of lectures with the object of endeavouring to show that the character of Christ was defective, and his teachings erroneous, and that the Bible was no more inspired than any other book, is illegal; and where the defendant having agreed to let certain rooms to the plaintiff for the purpose of delivering lectures afterwards discovered that the object of the lectures was to propound such doctrines, declined to allow the rooms to be used for such purposes, in an action by the plaintiff for breach of contract, it was held, that the defendant might justify on the ground that the plaintiff intended to use the rooms for illegal purposes, and a plea to that effect was held to be an answer to the action."

This case is reported in Exchequer Reports, and it must not be forgotten that this is a very modern decision.

Referring particularly to this case, the above-quoted legist writes:—"It follows clearly, that if contradicting the prevailing religious opinion is a crime, that the courts of law will be bound to withhold their support to any legal transaction which is tainted with heresy. Therefore, any contract having for its object the publication or promulgation of opinions which the law will regard as blasphemy, will necessarily be illegal. The point was decided, if I may say so, with every circumstance of aggravation, in the Court of Exchequer in 1867. The Secretary of the Liverpool Secular Society hired rooms for two lectures the subjects of which were advertised in these terms—'The Character and Teachings of Christ; the former defective, the latter misleading,' and 'The Bible shown to be no more inspired that any other book.' The Court of Exchequer, on the authority of the statutes 9 and 10 Will. III., held that 'it was illegal to deny the Christian religion to be true or the Holy Scriptures to be of divine authority. That was the ground taken by Baron Bramwell. Chief Baron Kelly went, however, a great deal farther, and said that to maintain that the character of Christ was defective or his teaching misleading 'is a violation of the first principle of the law, and cannot be done without blasphemy.' Baron Martin was apparently ashamed of the law which he had to administer, and said 'I protest against the notion that this is any punishment of the person advocating these opinions. It is merely the case of the owner of property exercising his rights over its use.' 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. Nevertheless, it is but right we should acknowledge a protest against bigotry from the Bench."

Any building, lecture-hall, room, or public place open for discussion or lectures on Sunday, by payment or ticket, for which payment has been made, is illegal, and the proprietor and promoters may be prosecuted for penalties.

Formerly all persons who disbelieved in God, or in a future state of rewards and punishments, were held to be incompetent as witnesses; but after the argument of the case of Bradlaugh *v.* De Rin a statute was passed, 32 and 33 Vict., c. 68 (Evidence Amendment Act, 1869), which enacts—

> "That if any person called to give evidence in any court, whether in a civil or criminal proceeding, shall object to take an oath, or shall be objected to as incompetent to take an oath, such person shall, if the presiding judge is satisfied that the taking of an oath would have no binding effect on his conscience, make the promise and declaration, the form of which is contained in the same section."

The 33 and 34 Vict., c. 49, s. 1, passed after Mr. Bradlaugh's evidence had been refused by an arbitrator, enacted that "presiding judge" shall be deemed to include any person having authority to administer oaths (see Russell on Crimes, by S. Prentice, vol. iii., p. 28).

And in consequence of the proceedings taken by the National Secular Society in the case of *ex parte* Lennard, on April 20, 1875, Lord Chief Justice Cockburn and Justices Blackburn, Mellor, and Field, sitting *in Banco* in the Court of Queen's Bench, made a rule absolute for a mandamus to compel Mr. Woolrych, the magistrate, to take the evidence of a witness who had declared himself an Atheist. This does not apply to Scotland, where Atheists and unbelievers are still incompetent as witnesses.

Following the above cases the Supreme Court at Sydney has decided in a recent case, Reg. *v.* Lewis, that by 40 Vict., No. 8, s. 3, known as the Evidence Further Amendment Act, 1876, and which is founded on the English Act 32 and 33 Vict., c. 68, a person who has no religious belief is competent to give evidence.

Heretical jurymen are still in a position of doubt and difficulty, for although many judges of superior courts and

many coroners are now allowing jurymen who object to be sworn to affirm under the Evidence Amendment Acts, 1869 and 1870, it is by no means clear that jurymen are covered by those statutes.

On this I again let my legist speak:—"One of the most common, as it certainly is one of the most absurd, arguments for religious prosecution has been that the administration of justice rests upon oaths, and oaths rest upon religion, and, therefore, everything tending to weaken religion tends to destroy the basis of justice. Even when I turn to a great American work on criminal law, published so recently as 1868, I find that venerable old fallacy trotted out with all the innocence imaginable. I do not mean, of course, that a man whose mind is imbued with religion is indifferent to the solemnity of an oath, but such a man would not be indifferent to truth or justice. The oath has a value only in the case where a man is so destitute of moral principles that he would readily bear false witness against his neighbour, but is so miserably superstitious that he will tell the truth under an oath from fear of hell fire. The fact is, that it is the authority of the Courts to punish perjury with imprisonment which alone gives any semblance of reality to oaths. When no temporal punishment is annexed to false swearing we never find that all the terrible sanctions of an oath have the smallest effect on even religious men. So far is it from being true that the administration of justice rests upon oaths, on the contrary, the value of the oaths depends on the substantial fact that perjury is a misdemeanour."

Under the head of "Depraving the Book of Common Prayer," Sir J. Stephen says:—

"Every one commits a misdemeanour and is liable upon conviction thereof to the punishments hereinafter mentioned, who does any of the following things, that is to say:

"Who in any interlude, play, song, rhymes, or other open words, declares or speaks anything in derogation, depraving, or despising of the Book of Common Prayer, or of anything therein contained, or any part thereof; or,

"Who by open fact, deed, or open threatenings, compels, causes, or otherwise procures or maintains any parson, vicar, or other minister, in any cathedral or parish church or chapel, or in any other place, to sing or say any common or open prayer, or to minister any sacrament otherwise or in any other manner or form than is mentioned in the said book.

"Who by any of the said means unlawfully interrupts and lets any

parson, vicar, or other minister, in any cathedral or parish church or chapel, in singing or saying common or open prayer, or ministering the sacraments, or any of them, in the manner mentioned in the said book.

"For the first offence the offender must be fined one hundred marks, and in default of payment within six weeks after his conviction, must be imprisoned for six months.

"For the second offence the offender must be fined four hundred marks, and in default of payment as aforesaid must be imprisoned for twelve months.

"For the third offence the offender must forfeit to the Queen all his goods and chattels and be imprisoned for life."

And he has also the further offence of "Depraving the Lord's Supper"—

"Everyone commits a misdemeanour who depraves, despises, or contemns, the sacrament of the supper and table of the Lord, in contempt thereof by any contemptuous words, or by any words of depraving, despising, or reviling, or by advisedly in any other wise contemning, despising, or reviling the said sacrament."

Shortt, in "The Law relating to Literature and Works of Art," says (p. 304):—

"In America the question has been more fully discussed than with us and the doctrines laid down by the Courts of that country are much more consonant to the tolerant views of the present day than any which can be extracted from our own authorities.

"In the People *v.* Ruggles, after a verdict and sentence for blasphemous words spoken against Jesus Christ, Kent, C.J., on appeal, said:—'After conviction we must intend that the words were uttered in a wanton manner and, as they evidently import, with a wicked and malicious disposition, and not in a serious discussion upon any controverted point in religion. The language was blasphemous, not only in a popular, but in a legal sense; for blasphemy, according to the most precise definitions, consists in maliciously reviling God or religion, and this was reviling Christianity through its Author. The jury have passed upon the intent, or *quo animo*, and if those words spoken, in any case, will amount to a misdemeanour the indictment is good. . . . The free, equal, and undisturbed enjoyment of religious opinion, whatever it may be, and free and decent discussions on any religious subject, are granted and secured; but to revile, with malicious and blasphemous contempt, the religion professed by almost the whole community, is an abuse of that right.' Another American judge speaks still more plainly: 'No author or printer,' says Duncan, J., 'who fairly and conscientiously promulgates opinions with whose truth he is impressed, for the benefit of others, is answerable as a criminal. A malicious and mischievous intention is, in such a case, the broad boundary between right and wrong; it is to be collected from the offensive levity, scurrilous and opprobrious language, and other circumstances, whether the act of the party was malicious.' And the criminal code of New York speaks in a similar tone—Art. 31, extracting a definition from existing common law decisions, describes blasphemy as consisting in 'wantonly uttering or publishing words, casting contumacious

reproach or profane ridicule upon God, Jesus Christ, the Holy Ghost, the Holy Scriptures, or the Christian religion ;' and Art. 32 adds—'If it appears beyond reasonable doubt that the words complained of were used in the course of serious discussion, and with intent to make known or recommend opinions entertained by the accused, such words are not blasphemy.' "

Shortt adds that—" No such liberal exception as obtains in America in favour of the honest and temperate expression of opinions opposed to the received doctrines of religion is made by any of our authorities."

The object of the foregoing address is to induce Freethinkers to agitate more earnestly for such changes as shall render the law more fair in its operation. The changes needed are—

1. The repeal of all the statutes inflicting penalties for opinion (as the 9 and 10 William III., c. 35) or placing hindrances in the way of lectures and discussions (as the 21 Geo. III., c. 49.)

2. The introduction into the repealing Act of some words which shall annul the present penal and disabling effect of the common law.

Or, failing the above,

3. That no prosecution for blasphemous libel shall be permitted unless authorised by the fiat of the Attorney-General, and that upon any such prosecution so authorised it shall be lawful for the accused to plead that the words complained of were *bonâ fide* used in the advocacy of and with intent to make known or defend opinions entertained by the accused, and that if the jury find such plea proved it shall be a good defence to any indictment.

It is also necessary to extend the Evidence Amendment Act (1869) and the Evidence Further Amendment Act (1870) Scotland.

5. To make the provisions of those Acts as clearly applicable in England, Ireland, and Wales to jurymen as they now are to witnesses.

To those who contend that religious persons should be protected from words of coarse insult against their faith or ceremonies, I will once more quote my legist friend :—

"There may undoubtedly be occasions where masses of antagonistic and inflammatory religious opinions are heaped

up ready for a conflagration, and that a word of insult may be sufficient to set it on fire; but surely it would be better to deal with such an act simply on the ground of its being calculated to lead to a breach of the peace. There is, on the other hand, always a danger that a jury may see insult where none was intended. We were made familiar last year, in the record of French tribunals, with a new and singular offence, called 'insulting the Marshal;' and we have observed that remarks which outside the heated atmosphere of a French election contest would be regarded as fair, not to say tame, criticism have been declared by the sensitive judges of France to be 'insults.' Moreover, so long as clergymen habitually insult and grossly libel their opponents, it is hardly fair that the punishment should be always on one side. If the clergy would set the example of fairness and moderation and decency in controversy, it would be quite unnecessary to pass laws to protect their tender feeling from the rough handling of Freethought lecturers. And we must remember that the demented creature Pooley was sentenced to twenty-one months' imprisonment for 'insulting' the established religion. In the present state of feeling in this country there is very little harm done in the way of insulting the dominant faith, but there is no small danger that when religious antipathies are once excited we shall have constructive insults readily found by those who wish to send men to prison."