

THE
SPEECHES
(AT LENGTH)

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OF THE HONOURABLE

T. ERSKINE, & S. KYD, Esq.

AT THE

COURT OF KING'S BENCH, WESTMINSTER,

ON SATURDAY, JUNE 24, 1797;

ON THE

TRIAL OF T. WILLIAMS,

FOR PUBLISHING

Paine's Age of Reason;

WITH

LORD KENYON'S CHARGE TO THE JURY.

SECOND EDITION CORRECTED.

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1797

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S P E E C H E S

OF THE

HON. T. ERSKINE AND S. KYD, Esq.

“ Gentlemen of the Jury,

THE charge of Blasphemy, which is put upon the record against the Publisher of this publication is not an accusation of the servants of the Crown, but comes before you sanctioned by the Oaths of a Grand Jury of the Country. It stood for trial upon a former day; but it happening, as it frequently does, without any imputation upon the Gentlemen named in the pannel, that a sufficient number did not appear to constitute a full Special Jury, I thought it my duty to withdraw the cause from trial, till I could have the opportunity which is now open to me of addressing myself to you, who were originally appointed to try it.

“ I pursued this course, however, from no jealousy of the Common Juries appointed by the laws for the ordinary service of the Court, since my whole life has been one continued experience of their virtues; but because I thought it of great importance, that those who were to decide upon a cause so very momentous to the Public, should have the highest possible qualifications for the decision. That they should not only be men capable from their educations of forming an enlightened judgment, but that their situations should be such as to bring them within the full view of their enlightened Country, to which in character and in

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estimation, they were in their own turns to be responsible.

“ Not having the honour, Gentlemen, to be sworn for the King as one of his Counsel, it has fallen much oftener to my lot to defend indictments for libels, than to assist in the prosecution of them. But I feel no embarrassment from that recollection; since I shall not be found to-day to express a sentiment, or to utter an expression inconsistent with those invaluable principles for which I have uniformly contended in the defence of others. Nothing that I have ever said, either professionally or personally for the Liberty of the Press, do I mean to-day to contradict or counteract. On the contrary, I desire to preface the very short discourse I have to make to you with reminding you, that it is your most solemn duty to take care that it suffers no injury in your hands. A free and unlicensed press (*in the just and legal sense of the expression*) has led to all the blessings both of Religion and government, which Great Britain or any part of the world at this moment enjoys, and is calculated still farther to advance mankind to higher degrees of civilization and happiness. But this freedom, like every other, must be limited to be enjoyed, and like every human advantage, may be defeated by its abuse.

“ Gentlemen! the Defendant stands indicted for having published this book, which I have only read from the obligations of professional duty, and which I rose from the reading of with astonishment and disgust. Standing here with all the privileges belonging to the highest Counsel for the Crown, I shall be entitled to reply to any defence that shall be made for the publication. I shall wait with patience till I hear it.

“ Indeed, If I were to anticipate the defence which I hear and read of, it would be defaming by
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anticipation the learned Counsel who is to make it. For if I am to collect it, even from a formal notice given to the prosecutors in the course of the proceedings, I have to expect, that instead of a defence conducted according to the rules and principles of English law and justice, the foundation of all our laws, and the sanctions of all our justice, are to be struck at and insulted. What is the force of that jurisdiction which enables the Court to sit in judgment? What but the Oath which his Lordship, as well as yourselves, have sworn upon the Gospel to fulfil. Yet in the King's Court, where his Majesty is himself also sworn to administer the justice of England—in the King's Court—who receives his high authority under a solemn Oath to maintain the Christian Religion, as it is promulgated by God in the Holy Scriptures, I am nevertheless called upon as Counsel for the prosecution to produce a certain book described in the indictment to be the Holy Bible.

“ No man deserves to be upon the Rolls of the Court, who dares, as an Attorney, to put his name to such a notice. It is an insult to the authority and dignity of the Court of which he is an officer; since it seems to call in question the very foundations of its jurisdiction. If this is to be the spirit and temper of the defence; if, as I collect from that array of books which are spread upon the benches behind me, this publication is to be vindicated by an attack of all the truths which the Christian Religion promulgates to mankind, let it be remembered, that such an argument was neither suggested nor justified by any thing said by me on the part of the prosecution.

“ *In this stage of the proceedings,* I shall call for reference to the sacred Scriptures, not from their merits, unbounded as they are, but from their authority in a Christian Country—not from the
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obligations of conscience, but from the rules of law. For my own part, Gentlemen, I have ever been deeply devoted to the truths of Christianity, and my firm belief in the Holy Gospel is by no means owing to the prejudices of education, (though I was religiously educated by the best of parents) but arises from the fullest and most continued reflections of my riper years and understanding. It forms at this moment the great consolation of a life which, as a shadow, must pass away; and without it, indeed, I should consider my long course of health and prosperity (perhaps too long and too uninterrupted to be good for any man) only as the dust which the wind scatters, and rather as a snare than as a blessing.

“ Much, however, as I wish to support the authority of Scripture from a reasoned consideration of it, I shall repress that subject for the present. But if the defence shall be as I have suspected, to bring them at all into argument or question, I shall then fulfil a duty which I owe not only to the Court as Counsel for the Prosecution, but to the Public, to state what I feel and know concerning the evidences of that Religion which is reviled without being examined, and denied without being understood.

“ I am well aware that by the communications of a free press, all the errors of mankind, from age to age have been dissipated, and dispelled; and I recollect that the world, under the banners of reformed Christianity, has struggled through persecution to the noble eminence on which it stands at this moment, shedding the blessings of humanity and science upon the nations of the earth.

“ It may be asked, by what means the Reformation would have been effected, if the books of the Reformers had been suppressed, and the errors of condemned and exploded superstitions had been supported as unquestionable by the State founded upon

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on those very superstitions formerly, as it is at present upon the doctrines of the Established Church? Or how, upon such principles, any reformation civil or religious, can in future be effected. The solution is easy:—Let us examine what are the genuine principles of the Liberty of the Press, as they regard writings upon general subjects unconnected with the personal reputations of private men, which are wholly foreign to the present inquiry? They are full of simplicity, and are brought as near perfection, by the Law of England, as perhaps is consistent with any of the frail institutions of mankind.

“ Although every community must establish supreme authorities, founded upon fixed principles, and must give high powers to Magistrates to administer laws for the preservation of the Government itself, and for the security of those who are to be protected by it: yet, as infallibility and perfection belong neither to human establishments nor to human individuals, it ought to be the policy of all free establishments, as it is most peculiarly the principle of our own Constitution, to permit the most unbounded freedom of discussion, even by detecting errors in the Constitution or Administration of the very Government itself, so as that decorum is observed, which every state must exact from its subjects, and which imposes no restraint upon any intellectual composition, fairly, honestly, and decently addressed to the consciences and understandings of men. Upon this principle, I have an unquestionable right, (a right which the best subjects have exercised) to examine the principles and structure of the Constitution, and by fair and manly reasoning, to question the practice of its administrators. I have a right to consider and to point out errors in the one or in the other; and not merely to reason upon their existence, but to consider the means of their reformation.

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“ By such free, well intentioned, modest, and dignified communication of sentiments and opinions all nations have been gradually improved, and milder laws and purer religions have been established. The same principles, which vindicate civil contentions honestly directed, extend their protection to the sharpest controversies on religious faiths. This rational and legal course of improvement was recognized and ratified by Lord Kenyon as the Law of England, in a late trial at Guildhall, when he looked back with gratitude to the labours of the Reformers, as the fountains of our religious emancipation, and of the civil blessings that followed in their train. The English Constitution, indeed, does not stop short in the toleration of religious *opinions*, but liberally extends it to *practice*. It permits every man, **EVEN PUBLICLY**, to worship God according to his own conscience, though in marked dissent from the national establishment, so as he professes the general faith, which is the sanction of all our moral duties, and the only pledge of our submission to the system which constitutes a State.

“ Is not this system of freedom of controversy, and freedom of worship, sufficient for all the purposes of human happiness and improvement? And can it be necessary for either, that the Law should hold out indemnity to those who wholly abjure and revile the Government of their country, or the Religion on which it rests for its foundation? I expect to hear, in answer to what I am now saying, much that will offend me. My learned Friend, from the difficulties of his situation, which I know from experience how to feel for very sincerely, may be driven to advance propositions which it may be my duty, with much freedom, to reply to; and the law will sanction that freedom. But will not the ends of justice be completely answered by that right, to point out the errors of his discourse in terms that
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are decent, and calculated to expose its defects; or will any argument suffer, or will public justice be impeded, because neither private honour and justice, nor public decorum, would endure my telling my very learned Friend, that he was a fool, a liar, and scoundrel; in the face of the Court, because I differ from him in argument or opinion? This is just the distinction between a book of free legal controversy and the book which I am arraigning before you. Every man has a legal right to investigate, with modesty and decency, controversial points of the Christian religion; but no man, consistently with a law, which only exists under its sanctions, has a right not only broadly to deny its very existence, but to pour forth a shocking and insulting invective, which the lowest establishments, in the gradations of civil authority, ought not to be permitted to suffer, and which soon would be borne down by insolence and disobedience, if they did.

“ The same principle pervades the whole system of the law, not merely in its abstract theory, but in its daily and most applauded practice.—The intercourse between the sexes, and which, properly regulated, not only continues, but humanizes and adorns our natures, is the foundation of all the thousand romances, plays, and novels, which are in the hands of every body. Some of them lead to the confirmation of every virtuous principle; others, though with the same profession, address the imagination in a manner to lead the passions into dangerous excesses. But though the Law does not nicely discriminate the various shades which distinguish these works from one another, so as that it suffers many to pass, through its liberal spirit, that upon principle might be suppressed, would it or does it tolerate, or does any decent

man contend that it ought to pass by unpunished libels of the most shameless obscenity, manifestly pointed to debauch innocence, and to blast and poison the morals of the rising generation? This is only another illustration to demonstrate the obvious distinction between the work of an author, who fairly exercises the powers of his mind, in investigating doctrinal points in the religion of any country, and him who attacks the rational existence of every religion, and brands with absurdity and folly the state which sanctions, and the obedient tools who cherish the delusion. But this publication appears to me to be as mischievous and cruel in its probable effects, as it is manifestly illegal in its principles! because it strikes at the best, sometimes, alas! the only refuge and consolation amidst the distresses and afflictions of the world. The poor and humble, whom it affects to pity, may be stabbed to the heart by it. They have more occasion for firm hopes beyond the grave, than those who have greater comforts to render life delightful. I can conceive a distressed but virtuous man, surrounded by children, looking up to him for bread when he has none to give them, sinking under the last day's labour, and unequal to the next, yet still looking up with confidence to the hour when all tears shall be wiped from the eyes of affliction, bearing the burden laid upon him by a mysterious Providence which he adores, and looking forward with exultation to the revealed promises of his Creator, when he shall be greater than the greatest, and happier than the happiest of mankind. What a change in such a mind might not be wrought by such a merciless publication? Gentlemen! whether these remarks are the overcharged declamations of an accusing Counsel, or the just reflections of a man anxious for the public freedom,

dom, which is best secured by the morals of a nation, will be best settled by an appeal to the passages in the work, that are selected by the indictment for your consideration and judgment. You are at liberty to connect them with every context and sequel, and to bestow upon them the mildest interpretation. [*Here Mr. Erskine read and commented upon several of the selected passages, and then proceeded as follows:*]

“ Gentlemen, it would be useless and disgusting to enumerate the other passages within the scope of the indictment. How any man can rationally vindicate the publication of such a book, in a country where the Christian Religion is the very foundation of the law of the land, I am totally at a loss to conceive, and have no ideas for the discussion of? How is a tribunal, whose whole jurisdiction is founded upon the solemn belief and practice of what is denied as falsehood, and reprobated as impiety to deal with such an anomalous defence? Upon what principle is it even offered to the Court, whose authority is contemned and mocked at? If the religion proposed to be called in question, is not previously adopted in belief and solemnly acted upon, what authority has the Court to pass any judgment at all of acquittal or condemnation? Why am I now, or upon any other occasion, to submit to your Lordship’s authority? Why am I now or at any time to address twelve of my equals, as I am now addressing you, with reverence and submission? Under what sanction are the witnesses to give their evidence, without which there can be no trial? Under what obligations can I call upon you, the Jury representing your Country, to administer justice? Surely upon no other than that you are sworn to administer it under the oaths you have taken. The whole judicial fabric, from the King’s sovereign

authority to the lowest office of magistracy, has no other foundation. The whole is built, both in form and substance, upon the same oath of every one of its ministers to do justice, AS GOD SHALL HELP THEM HEREAFTER. What God? And what hereafter? That God, undoubtedly, who has commanded Kings to rule, and Judges to decree justice; who has said to witnesses, not only by the voice of nature, but in revealed commandments—THOU SHALT NOT BEAR FALSE TESTIMONY AGAINST THY NEIGHBOUR; and who has enforced obedience to them by the revelation of the unutterable blessings which shall attend their observances, and the awful punishments which shall await upon their transgressions.

“ But it seems, this is an age of reason, and the time and the person are at last arrived, that are to dissipate the errors which have overspread the past generations of ignorance. The believers in Christianity are many, but it belongs to the few that are wise to correct their credulity. Belief is an act of reason, and superior reason may, therefore, dictate to the weak. In running the mind along the long list of sincere and devout Christians, I cannot help lamenting, that Newton had not lived to this day, to have had his shallowness filled up with this new flood of light.—But the subject is too awful for irony. I will speak plainly and directly. Newton was a Christian! Newton, whose mind burst forth from the fetters cast by nature upon our finite conceptions—Newton whose science was truth, and the foundation of whose knowledge of it was philosophy; not those visionary and arrogant presumptions, which too often usurp its name, but philosophy resting upon the basis of mathematics, which, like figures, cannot lie. Newton, who carried the line and rule to the uttermost barriers

of creation, and explored the principles by which, no doubt, all created matter is held together and exists. But this extraordinary man, in the mighty reach of his mind, overlooked, perhaps, the errors, which a minuter investigation of the created things on this earth might have taught him, of the essence of his Creator. What shall then be said of the great Mr. Boyle, who looked into the Organic Structure of all Matter, even to the brute inanimate substances, which the foot treads on. Such a man may be supposed to have been equally qualified with Mr. Paine to look up through Nature to Nature's God. Yet the result of all his contemplation was the most confirmed and devout belief in all which the other holds in contempt, as despicable and drivelling superstition.—But this error might, perhaps, arise from a want of a due attention to the foundations of human judgment, and the structure of that understanding which God has given us for the investigation of truth.—Let that question be answered by Mr. Locke, who was, to the highest pitch of devotion and adoration, a Christian. Mr. Locke, whose office was to detect the errors of thinking, by going up to the fountains of thought, and to direct into the proper track of reasoning, the devious mind of man, by shewing him its whole process, from the first perceptions of sense to the last conclusions of ratiocination, putting a rein besides upon false opinion, by practical rules for the conduct of human judgment. But these men were only deep thinkers, and lived in their closets, unaccustomed to the traffic of the world and to the laws which practically regulate mankind.

“ Gentlemen! in the place where we now sit to administer the justice of this great country, above a century ago, the never to be forgotten Sir Matthew Hale presided; whose faith in Christianity is an
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exalted commentary upon its truth and reason, and whose life was a glorious example of its fruits in man, administering human justice with a wisdom and purity drawn from the pure fountain of the Christian dispensation, which has been, and will be, in all ages, a subject of the highest reverence and admiration. But it is said by the Author, that the Christian Fable is but the tale of the more ancient superstitions of the world, and may be easily detected by a proper understanding of the Mythologies of the Heathens. Did Milton understand those mythologies? Was *he* less versed than Mr. Paine in the superstitions of the world? No, they were the subject of his immortal song; and though shut out from all recurrence to them, he poured them forth from the stores of a memory rich with all that man ever knew; and laid them in their order as the illustration of that real and exalted faith, the unquestionable source of that fervid genius, which cast a sort of shade upon all the other works of man—

He passed the bounds of flaming space,
Where Angels tremble while they gaze;
He saw, till blasted with excess of light,
He closed his eyes in endless night.

But it was the light of the body only that was extinguished; “The celestial light shone inward, and enabled him to justify the ways of God to man.”—The result of his thinking was nevertheless not the same as the Author’s. The mysterious incarnation of our Blessed Saviour (which this work blasphemes in words so wholly unfit for the mouth of a Christian, or for the ear of a Court of Justice, that I dare not, and will not, give them utterance) Milton made the grand conclusion of the *Paradise Lost*,
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the rest from his finished labours and the ultimate hope, expectation, and glory of the world.

A Virgin is his Mother, but his Sire,
The power of the Most High; he shall ascend
The Throne hereditary, and bound his reign
With Earth's wide bounds, his glory with the Heav'ns.

“ The immortal Poet having thus put into the mouth of the Angel the prophecy of man's redemption, follows it with that solemn and beautiful admonition, addressed in the Poem to our great First Parent, but intended as an address to his posterity through all generations.

This having learn'd, thou hast attain'd the sum
Of wisdom, hope no higher, tho' all the stars
Thou knew'st by name, and all th' ethereal pow'rs,
All secrets of the deep, all Nature's works,
Or works of God in Heav'n, air, earth, or sea,
And all the riches of this world enjoy'st,
And all the rule, one empire; only add
Deeds to thy knowledge answerable, add faith,
Add virtue, patience, temperance, add love,
By name to come call'd Charity, the Soul
Of all the rest: then wilt thou not be loth
To leave this Paradise, but shall possess
A Paradise within thee, happier far.

“ Thus you find all that is great, or wise, or splendid, or illustrious, amongst created beings; all the minds gifted beyond ordinary nature, if not inspired by its universal author for the advancement and dignity of the world, though divided by distant ages, and by the clashing opinions, distinguishing them from one another, yet joining as it were in one sublime chorus, to celebrate the truths of Christianity, and laying upon its holy altars the never-fading offerings of their immortal wisdom.

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“ Against all this concurring testimony, we find suddenly, from the author of this book, that the Bible teaches nothing but “ lies, obscenity, cruelty, and injustice.” Had he ever read our Saviour’s Sermon on the Mount?—in which the great principles of our faith and duty are summed up?—Let us all but read and practise it, and lies, obscenity, cruelty, and injustice, and all human wickedness would be banished from the world!

“ Gentlemen, there is but one consideration more which I cannot possibly omit, because I confess it affects me very deeply. The author of this book has written largely on public liberty and government; and this last performance has on that account, been more widely circulated, and principally among those who attached themselves from principle to his former works. This circumstance renders a public attack *upon all revealed religion* from such a writer infinitely more dangerous. The religious and moral sense of the people of Great Britain, is the great anchor which alone can hold the vessel of the state amidst the storms which agitate the world, and if I could believe for a moment, that the mass of the people were to be debauched from the principles of religion, which forms the true basis of that humanity, charity, and benevolence, that has been so long the national characteristic, instead of mixing myself, as I sometimes have done, in political reformations, I would rather retire to the uttermost corners of the earth to avoid their agitation; and would bear, not only the imperfections and abuses complained of in our own wretched establishment, but even the worst Government that ever existed in the world, rather than go to the work of reformation with a multitude set free from all the charities of Christianity, who had no sense of God’s existence, but from Mr. Paine’s *Observation of Nature,*

Nature, which the mass of mankind have no leisure to contemplate; nor any belief of future rewards and punishments, to animate the good in the glorious pursuit of human happiness, nor to deter the wicked from destroying it even in its birth. But I know the people of England better. They are a religious people, and with the blessing of God, as far as it is in my power, I will lend my aid to keep them so.

“ I have no objections to the freest and most extended discussions upon doctrinal points of the Christian Religion, and *though the law of England does not permit it*, I do not dread the reasoned arguments of Deists against the existence of Christianity itself, because, as was said by its Divine Author, if it is of God, it will stand. An intellectual book, however erroneous, addressed to the intellectual world upon so profound and complicated a subject can never work the mischief which this indictment is calculated to repress. Such works will only employ the minds of men enlightened by study, to a deeper investigation of a subject well worthy of their deepest and continued contemplation. The powers of the mind are given for human improvement in the progress of human existence. The changes produced by such reciprocations of lights and intelligences are certain in their progressions, and make their way imperceptibly, as conviction comes upon the world, by the final and irresistible power of truth. If Christianity be founded in falsehood, let us become Deists in this manner and I am contented. But this book has no such object, and no such capacity: it presents no arguments to the wise and enlightened. On the contrary, it treats the faith and opinions of the wisest with the most shocking contempt, and stirs up men without the advantages of learning, or sober thinking, to a total disbelief

of every thing hitherto held sacred; and consequently to a rejection of all the laws and ordinances of the state, which stand only upon the assumption of their truth.

“ Gentlemen! I cannot conclude without expressing the deepest regret at all the attacks upon the Christian Religion by authors who profess to promote the civil liberties of the world. For under what other auspices than Christianity have the lost and subverted liberties of mankind in former ages been re-asserted? By what zeal, but the warm zeal of devoted Christians have English liberties been redeemed and consecrated? Under what other sanctions, even in our own days, have liberty and happiness been extending and spreading to the uttermost corners of the earth? What work of civilization, what common wealth of greatness has this bald religion of nature ever established? We see on the contrary, the nations that have no other light than that of Nature to direct them, sunk in barbarism, or slaves to arbitrary Governments; whilst since the Christian æra, the great career of the world has been slowly, but clearly advancing, lighter at every step, from the awful prophecies of the Gospel, and leading, I trust, in the end to universal and eternal happiness. Each generation of mankind can see but a few revolving links of this mighty and mysterious chain, but by doing our several duties in our allotted stations, we are sure, that we are fulfilling the purposes of our existence. You, I trust, will fulfil yours this day!”

A Mr. *Fleming*, one of the Clerks of the Bank, was the only witness called on the part of the Prosecution. He said, he purchased the book in question, of the Defendant, at his shop, on the 7th of February last.

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The NOTICE which Mr. *Erskine* mentioned in his speech was here read, and Mr. *John Martin*, the Attorney for the Defendant, readily admitted that he had sent it to those who were concerned for the prosecution.

“ Mr. KYD began his address to the Jury by observing, that the charge against the Defendant was certainly a serious and a formidable one. He said, the Defendant had imposed on him the duty of defending him; and expressed his assurance, that, while he endeavoured to discharge this duty with full attention to the respect that was due to the dignity of the Court, and with that decent and unaffected seriousness which he felt belonged to the subject, he should be favoured with a patient and impartial hearing, both from his Lordship and the Jury. Though he had undertaken to defend this man from the penal consequences which it was sought to attach to the publication of the pamphlet in question, yet he thought it proper, in this early period of his address, and indeed Mr. *Erskine* had in a manner called upon him, to apprise the Jury, that it was not a matter of course that he should have undertaken to maintain the truth of every assertion contained in the passages selected for prosecution, or to assert the correctness of the reasoning, or the justness of every conclusion drawn from the facts alleged or the arguments stated in the publication. On such a plan, he said, it would be impossible to defend any book that was ever written on the subject of Religion or Politics, Metaphysics or Morals, or on any other subject which in its nature, was not susceptible of strict and absolute demonstration: on such a plan, he would not undertake to defend even the excellent answer of the Bishop of Llandaff to part of the very publication which was the object of the prosecution, nor the answer of the same learned

learned Prelate to the 15th and 16th chapters of Mr. Gibbon's Roman History. He wished it to be distinctly understood, that he did not appear in the place where he stood in the character of a theological disputant, whose object it might be, to maintain the truth of one system of religious tenets, or to arraign the falshood of another; that he did not present himself before the Jury as a Deist prepared to deny the truth of revealed religion, to impeach the authority of the Bible, or to justify, in the strict and legal sense of the word, the attack made upon it by the publication which was the object of the present prosecution: but that he stood where he did, as Advocate in an English Court of Justice, to assert and to maintain the right of every individual, fairly and honestly to discuss a subject, confessedly of the first importance to mankind; and to publish to the world the result of his inquiries thus honestly and fairly made, whether that result were right or wrong—in favour of the prevailing system, or against it.

In all prosecutions for libel, he said, the charge against the Defendant consisted of two component parts—the fact of writing, printing or publishing, and the intention with which he writes, prints or publishes. The fact was always the object of testimony: the intention, too, might sometimes be the object of testimony, and might be collected from circumstances and facts extrinsic to the work which was the object of prosecution: but it was generally to be collected from the tenor and substance of the work itself. The mere fact of publication was in itself no crime: if it were, the Defendant might as well be found guilty of publishing a libel of any description which legal ingenuity might suggest, for having published *the Bible*, as for having published *the Age of Reason*. But whatever might formerly have been held to be the Law, we owed it to the
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great talents and unwearied exertions of his learned Friend who conducted the present prosecution, that it was now happily established, that, from the mere fact of publication, a Jury was not to convict; they were to look to the intention of the Defendant, whether he were the author or publisher; and, from their opinion of the moral guilt or innocence of that intention, to convict or to acquit.—In the present case, he said, the fact of publication was proved; the only object, therefore, for the consideration of the Jury, was the guilt or innocence of the intention.

“ In most prosecutions for libel, he said, the language in which the Defendant’s intention was charged in the instrument of accusation, was plain and intelligible to common understandings, incapable of admitting different meanings, according to the different principles of the persons who read it. This observation, however, was far from being applicable to the present case, as would be seen from an examination of the terms—They were these, ‘ Blasphemously, impiously, and profanely.’ He would on no occasion, he said, choose to occupy the time of a Jury by an ostentatious and useless display of learning; much less would he attempt it on an occasion so serious and so solemn as the present: he hoped, therefore, no such intention would be imputed to him, from his endeavouring to fix the exact and original meaning of these terms; he felt it necessary to the full performance of his duty to his Client. ‘ Blasphemously,’ he said, ‘ was derived from two Greek words, which signify to hurt, to injure or to wound the fame, character, reputation, or good opinion; it therefore meant, ‘ with an intention to hurt,’ &c. ‘ Profanely,’ was 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 fa-
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voured votaries might be received to a more immediate communication with the object of their worship; in the language of ancient legends, a "fane." "Profane," when applied to place, comprehended all that is not thus considered as holy ground; when applied to them, it was considered as a term of reproach, implying that they were unworthy to approach the sacred spot, unworthy of the communion of the favoured votaries: to do any thing "profanely," therefore, was to do it in a manner, or with an intention, to offend that which is esteemed holy; or, as all subordinate Divinities were now banished from hence, "in a manner, or with an intention, to offend the one Supreme God." "Impiously," was derived from the Latin word *pius*, which expressed the attachment, affection, respect or reverence which is due from a man to some other being, to whom he stands in the relation of an inferior; as between a son and a father, it expressed filial affection; as between a man and the Deity; it expressed the constant and habitual reverence due from the former to the latter:—to do any thing "impiously," therefore, was to do it "in a manner, or with an intention, inconsistent with that reverence which is due from a man to his Creator." It was plain, therefore, that according to the different systems of religious opinions which men embrace, they would apply the epithets of blasphemous, impious and profane, reciprocally to each other, and frequently with equal justice. He exemplified this by instances from ancient history: the Persians, he said, worshiped the Fire and the Sun, as emblems or representatives of the Divine Being; but they thought it impious to confine the Deity to a local habitation, and therefore they had no temples. Cambyses, when he invaded Egypt, destroyed the temples of the sacred animals, and reproached the Egyptians as impious, blasphemous

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and profane, for worshiping a bull, a cat, or an onion; the Egyptians, on the other hand, reproached him in the same terms, for violating the objects of their religious adoration. When Xerxes invaded Greece, pursuing in like manner the spirit of his own religion, he destroyed the Grecian temples, and reproached the Greeks with impiety, in pretending to confine the Deity to a local habitation; the Greeks, on the contrary, reproached him as impious and profane, for violating their temples. A Christian might call a Turk blasphemous, impious, and profane, for maintaining the Divine Mission of Mahomet: the Turk would speak of the Christian in the same terms, for denying that Mission, and reviling the Koran. The promoters of the present prosecution assumed it as a first principle not to be discussed or controverted, that the Bible was written under the immediate authority of the Deity, and that it contained the revelation of his will; they would, therefore, justly, according to that assumed principle, brand with the epithets of blasphemous, impious and profane, the man who should deny the Bible to be the Word of God, or speak of it in a disrespectful manner. On the other hand, the Author of the work now under prosecution, and others of similar opinions, having formed their ideas of the justice, benevolence, and other attributes of God, from a contemplation of his works, assumed the right of examining, by the standard of those ideas, any book that was presented to them as containing the Word of God, and being written under his immediate inspiration. If, therefore, they thought they found any thing in this book which attributed to the Deity things inconsistent with their pre-conceived ideas of his dignity, they would call those blasphemous, impious, and profane, who offered this book as containing the Word of God. Therefore, said Mr. Kidd, I think
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I have delivered myself from the necessity of shewing that the intention was not blasphemous, impious, or profane.

“ The real question, therefore, was not whether the Jury or his Lordship approved the book—not whether they condemned the passages selected from it, and inserted in this indictment, or any other part of it—not whether the Jury were of the same opinion with the author; but whether at the time when he wrote the book, he felt as he wrote, and expressed himself as he felt? whether he meant seriously to examine an important subject, and to submit his thoughts on it to the world without a wanton and malevolent intention to do mischief? If this was his object, and Mr. Kyd said he thought it impossible to prove the contrary, he had the respectable authority of the Bishop of Llandaff for saying, that the author ought not, and of course the publisher ought not, to be amenable to a human tribunal. He had his authority for saying more; he had his authority for saying, that it was not for any human tribunal to sit in judgment on the intention with which a man writes, or publishes what he writes, on such subjects.

“ Mr. Kyd then read a passage from Bishop Watson's Answer to the Age of Reason, and another from his Answer to the 15th and 16th Chapters of Mr. Gibbon's Roman History. He likewise read a letter of Dr. Lardner's to the Bishop of Chichester on the subject of Woolston's Discourses on the Miracles of our Saviour, to prove the same proposition; and said he could add many similar authorities, but he thought these sufficient. Mr. Kyd then observed, that these learned persons spoke in favour of a much greater latitude of liberty in writing on subjects of religious controversy than he thought he had at present any occasion to require; they maintained that no human tribunal ought to interpose;

terpose; that even the *intention* of the writer ought not to be brought under the cognizance of the Civil Magistrate: all that *he* had at present to contend was, that no malevolent intention could be fairly imputed to the author of the present publication. He should argue this, in the first place, from the publication itself, which, in many parts of it, spoke in terms of the most reverential awe of the Great Author of the Universe—in terms the most respectful of the character of the Founder of the Christian Religion, and of the moral doctrines which he taught; and he defied the most active industry of the Counsel for the Prosecution to find a single passage in the whole work, inconsistent with the most chaste, the most correct system of morals.

“ He then read several of the leading passages of the pamphlet, in confirmation of his assertion; and said he would go farther—he would venture to assert, that, however erroneous the first principles of the author might be, however incorrect his conclusions from those principles, yet, admitting those principles as the foundation of his reasoning, some of the very passages selected for prosecution afforded the strongest proofs of the chastity of the author’s mind, of the benevolence of his heart, the philanthropy of his disposition, and the correctness of his moral sense. The author might be wrong, and he did not feel it incumbent on him to argue that he was right in drawing the conclusions which he did; but his error was involuntary; it was the error of his judgment; it did not proceed from the wickedness and corruption of his heart.

“ Mr. Kyd then read the several passages which had been read from the Indictment: made several comments on them, and on the answers which some of them had received from the Bishop of Llandaff; and argued, that they were conclusions which a man

fairly and without prejudice discussing the subject, might honestly draw from the premises. He then contended strenuously for an unlimited right of discussion on all subjects, particularly on religious subjects: argued the impolicy of restraint, as being hurtful to the interests of the Christian religion; and referred to the consequences which followed the conduct of the Council of Nice—appealing to the authority of Dr. Lardner, who attributed to the conduct of that Council the banishment of the Christian religion from Asia, where it was first planted, and had flourished for more than three centuries.

“ He spoke in terms of severe reprobation of the prosecution, which compelled him, in the discharge of his duty to his Client, to enter into a discussion which was irksome to him, and might be productive of dangerous effects on the public mind. As to the Defendant, he contended, *he* ought to be acquitted, whatever might be thought of the author. The pamphlet had been published and sold so long ago as the year 1794; it had sunk into oblivion, where it might quietly remained, had it not been for the Answer of the Bishop of Llandaff, which had raised it from the grave; that Answer being published in the year 1796, the Defendant had printed the present edition from no other motive than to give the Public an opportunity of knowing what it was the Bishop had thought worthy of an Answer.”

Mr. ERSKINE made a most eloquent reply. He said, he was bound, in respect to his learned Friend, as a Member of a most honourable profession, to suppose, that he was placed in a very irksome situation, to be called on for a defence so exceedingly difficult to make and so extremely delicate to manage, without violating that common de-

cency

agency that was due to a court of Justice. He could not therefore help considering him as entitled to a considerable degree of indulgence. Mr. Erskine here adverted to several of the passages selected from the Old Testament by Mr. Kyd, and explained the reason of their introduction into the sacred writings. The history of man, he said, was the history of man's vices and passions, which could not be censured without adverting to their existence; and many of the instances that had been referred to, were recorded as memorable warnings and examples for the instruction of mankind. Mr. E. next entered most forcibly and deeply into the evidences of Christianity, particularly those that were founded on that stupendous scheme of prophecy, which formed one of the most unanswerable arguments for the truth of the Christian Religion. "It was not," he said, "the purpose of God to destroy free agency by overpowering the human mind with the irresistible light, and conviction of revelation, but to leave men to collect its truth, as they were gradually illustrated in the accomplishment of the Divine promises of the Gospel. Bred as he was to the consideration of evidence, he declared he considered the prophecy concerning the destruction of the Jewish nation, if there was nothing else to support Christianity, absolutely irresistible. The division of the Jews into tribes, to preserve the genealogy of Christ, the distinction of the Tribe of Judah, from which he was to come; the loss of that distinction when that end was accomplished; the predicted departure of the sceptre from Israel; the destruction of the Temple of Jerusalem, which imperial munificence in vain attempted to rebuild to disgrace the prophecy; the dispersion of this nation over the face of the whole earth, the spreading of the Gospel throughout the world; the persecutions of its true

ministers, and the foretold superstitions which for ages had defiled its worship—these were topics upon which Mr. Erskine expatiated with great eloquence, and produced a most powerful effect on every part of the audience. He concluded, with a vindication of the authors of this prosecution. He said they were men of the highest character and greatest consideration in the country. Many of them were charged with the offices of religion; others of them were clothed with the robes of magistracy; most of them were men of deep learning and thinking; and all of them justly entitled to the thanks of the Public for their noble exertions in the cause of religion and virtue.

Lord Kenyon then made the following

CHARGE TO THE JURY.

“ Gentlemen of the Jury,

“ Being now in possession of all the facts of this case, and convinced, in my own mind, what conclusion ought to be drawn from them, I am not sure, that it is necessary to say any thing at all to you upon the subject. Gentlemen, before you proceed to decide on the merits of this or any other cause, it is proper to see whether the parties litigating stand in a fair light before you. I was extremely hurt when the learned Counsel for the Defendants thought fit to state to you, with very considerable emphasis, and a very determined tone of voice, that this was a scandalous prosecution. I cannot help wishing that sentence had not been uttered. Who commenced this prosecution, I certainly know not. But from what fell from the very learned Counsel who has just sat down, I am inclined to suppose it proceeded from a society of Gentlemen instituted for the most important of all purposes, for preserving the morals of the people: a society composed of Clergymen and Laymen of the most respectable character in the kingdom, who, seeing how the country is overrun with profligacy and wickedness, which boldly raise their heads in defiance
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of the law of the land, were determined to see whether, in the first place, by admonition and advice, they could not stop the torrent of vice and immorality; and secondly, if that should fail, to try what could be done by punishment. If people, with the very best intentions, carry on prosecutions that are oppressive, the end may not always perhaps sanctify the means. But the manner in which this prosecution has been conducted, is certainly not oppressive; for instead of proceeding in the more expensive mode, the Prosecutors went before a Grand Jury of the Country: and it was necessary to obtain the opinion of that Grand Jury before the party could be put in process.

“ Gentlemen, we sit here in a Christian Assembly to administer the laws of the land, and I am to take my knowledge of what the law is from that which has been sanctioned by a great variety of legal decisions. I am bound to state to you what my predecessors in Mr. Woolston’s case (2 Strange, 834) stated half a century ago in this Court, of which I am an humble Member, namely, that the Christian Religion is part of the law of the land. Christianity from its earliest institution met with its opposers. Its professors were very soon called upon to publish their apologies for the doctrines they had embraced. In what manner they did that, and whether they had the advantage of their adversaries, or sunk under the superiority of their arguments, mankind for near two thousand years have had an opportunity of judging. They have seen what Julian, Justin Martyr, and other Apologists have written, and have been of opinion the argument was in favour of those very publications. The world has been lately favoured with another apology from a most learned and respectable prelate, who calls his work *An Apology for the Christian Religion*. I shall not decide between the merits of the one and the other. The publications themselves are in the hands of the world; and I sincerely wish in the concluding language of the work to which I have just referred (I do not affect to use the very words) I sincerely wish that the author of the work in question may become a partaker of that faith in revealed religion, which he has so grossly defamed, and may be enabled to make his peace with God
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fer that disorder which he has endeavoured to the utmost of his power to introduce into society. We have heard to day, that the light of Nature, and the contemplation of the works of creation are sufficient, without any other revelation of the Divine Will. Socrates, Plato, Xenophon, Tully---each of them in their turns professed they wanted other lights; and knowing and confessing that God was good, they took it for granted the time would come when he would impart a farther Revelation of his Will to mankind. Though they awaked as it were through a cloud, darkly, they hoped their posterity would almost see God face to face. This condition of mankind has met with reprehension to day. But I shall not pursue this argument. Fully impressed with the great truths of religion, which, thank God, I was taught in my early years to believe, and of which the hour of reflection and inquiry, instead of producing any doubt, has fully confirmed me in.

“ I expected the learned Counsel for the Defendant would have differed the case of the Publisher from that of the Author of this work; that he would have endeavoured to convince you that whatever guilt might belong to the Author, nothing was imputable to the Publisher. He has, however, to my utter surprize, exactly reversed the case. He tells you, it was originally published at Paris in 1794; that the feelings of the Author's friends were wounded by this work, which I call a nefarious publication, and that it was in a great measure forgotten; and you are now called upon to judge of the merits or demerits of the publisher, who has brought forth a still-born work, forgotten by every body, till he ventured in defiance of the verdicts of mankind on the Author's political works, to send it forth among the inhabitants of this country. Unless it was for the most malignant purposes, I cannot conceive how it was published. It is however for you to judge of it, and to do justice between the Public and the Defendant.”

The Jury instantly found the Defendant—GUILTY.

FINIS



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