

*Supplement to Trials Jan. v. April*

**REPORT**  
**OF THE ARGUMENTS**  
 OF THE  
**ATTORNEY OF THE COMMONWEALTH,**  
 AT THE TRIALS OF  
**ABNER KNEELAND,**  
 FOR BLASPHEMY,  
 IN THE  
 MUNICIPAL AND SUPREME COURTS,  
 IN BOSTON,  
 JANUARY AND MAY, 1834.

---

(Collected and published at the request of some Christians of various denominations.)

---

*"Naturam hominis hanc Deus ipse voluit, ut duarum rerum cupidus et appetens esset—religionis et sapientiæ. Sed homines ideo falluntur, quod aut religionem suscipiunt, omissa sapientia: aut sapientiæ soli student, omissa religione, cum alterum sine altero esse non possit verum."*

*LANCTANTIUS de Falsa Sapientia Lib. III. B. ii.*

---

[Copy Right Secured.]

---

PRINTED BY BEALS, HOMER & CO.  
 No. 34, Congress Street.

---

1834.



FEB 28 1941

Much misrepresentation concerning the origin, nature and object of the prosecution against Mr. Kneeland, having been industriously circulated in various parts of the United States, some friends of religion and law thought it might be useful to the cause of truth, to obtain the views and arguments of the prosecuting officer as expressed at the trials, and place them before the public with accuracy and authenticity. It is known that Mr. K. or his friends have already put to the press their account of the first trial with his Counsel's celebrated argument at length, for on the trial of the appeal Mr. Dunlap read that printed argument to the Jury; therefore those who wish to read both sides of this case will have an opportunity.

*Rec. Apr. 6, 1898*

IN THE MUNICIPAL COURT OF BOSTON,

Tuesday, January 21st, 1834.

Mr. S. D. Parker, in behalf of the Commonwealth, opened the cause as follows:—

In the progress of official duty, Gentlemen of the Jury, I come to the cause now to be submitted to your investigation and decision with much reluctance, both on account of its painful and disgusting nature, and because the severe pressure of the business of this term of the Court has allowed me no sufficient time for preparation in a prosecution so important to the community, and so deeply affecting the venerable looking person now put on trial for an offence, the commission of which could never have been anticipated from a head silvered over with the common emblems of age and wisdom. You yourselves, Gentlemen, have seen how assiduous and constant the labours of the Court have been since the commencement of this term fifteen days ago in the trials of those cases in which the prisoners denied their guilt; and when you are informed that in the two days in which the Grand Jury pursued their enquiries I was necessarily with them all the time and examined one hundred and fifty Witnesses to extract the truth and circumstances of the many diversified cases before them in which they directed Indictments, and in those additional cases also where they found no bills; when besides the examination of these numerous witnesses, *thirty-nine* Bills of Indictment were to be drawn on Tuesday evening and night, ready for the Grand Jury's return to Court on Wednesday morning, many of them necessarily long and complex from the nature and circumstances of the crimes charged; when you consider that in this Court already this term an unusual number of Verdicts have been rendered in important trials, in several of which diligent and able Counsel have exhausted their skill in cross-examination of witnesses and their oratorical powers in elaborate addresses to the Jury, and that moreover I was called yesterday into the Supreme Court and obliged by duty as Attorney of the Commonwealth, to pass the whole day on the trial of an appeal there pending—and further, that I never saw or heard of this blasphemous Libel until it was sent a few days ago into the Grand Jury room for notice; you will readily perceive how little opportunity has been afforded the Government's Attorney, (wholly unassisted in his labours) for a proper preparation in this prosecution, which, from its nature, is of vital importance in a christian community, and from the crowds which throng this Hall of

Justice, seems to have excited so much public interest. I had hoped that the defendant upon his arraignment would have availed himself of a standing rule of the Court, which allows one continuance to the next monthly term to all persons who are *brought in* unexpectedly to answer for offences without any previous notice of a prosecution; and probably the defendant would have taken this usual course, if he had not thought it important to engage in his defence the talents of a distinguished Counsellor and orator, whose public duty it is expected will soon call him to attend the Supreme Court of the United States at Washington, and prevent his attendance here next month. The accused has therefore requested the Court to appoint this day for his trial, and I have made it a rule never to ask for delay on my own account. We have received instruction to manage the public business with the greatest economy and despatch, and knowing that it costs this County nearly a hundred dollars a day for each day of this Court's sitting, I have felt it a bounden duty to do all the business I can in the least possible time, disregarding my own comfort and convenience. I have only to regret that the public duty is not done better. In the present case however, Gentlemen, I have the consolation of knowing, that though the cause is one of the highest importance, yet so gross, indecent, and scandalous is the offence, so clear, explicit, and direct is the law which is violated, so complete, concise, and conclusive the testimony upon which the prosecution rests, that, imperfect as the preparation may be, the rights of the public will not be in much danger of suffering. Nevertheless, there are many important principles involved in this cause, concerning which, in order to prevent misapprehension and misrepresentation, it will be necessary to express very clear ideas, and as I perceive, that what is said to-day is to be written down by the defendant's Reporter, it will be necessary to express those ideas in very accurate language. Those principles I allude to, are the rights of conscience, the freedom of fair discussion, the liberty of the press, the duty of toleration, the mischief of religious persecution, and other interesting subjects which will of course arise, and present themselves for consideration. It will be my endeavour to detail my views to you in the plainest and most intelligent manner possible upon these various topics as they come up in the cause; and it is certainly a matter upon which I can congratulate you and all who hear me, that we live in a country, and in an age in which these subjects so essentially connected with human happiness and the rights of man, have been ably discussed and are generally understood.

You have perceived Gentlemen, that the offence charged in this Indictment against the defendant is alleged to be in violation of a Statute Law of this Commonwealth in such case made and provided.

Besides being a Statute offence, what is set forth in the Indictment, is also an offence at Common Law. Both the Statute and the Common Law will therefore be subjects for your consideration, because if in your opinion, after a full hearing of the case,

you should not think it a Statute offence, you have a right to return a verdict as upon an offence at Common Law,\* which is a part of the law of this land, and recognized as such both in the Constitution of the Commonwealth, and in that also of the United States. My course then will be to present to your notice on this occasion—

1. The Statute Law relating to this offence;
2. The Common Law;
3. The importance and paramount duty of enforcing these laws, and punishing all violations of them;
4. The testimony on which the prosecution is founded, and by which the guilt of the defendant will be made manifest.

Gentlemen, this is not the time or place for me to discuss, and pronounce an eulogium upon the merits or evidences of religion in general, or of christianity in particular, the wisest, best, and most fully evidenced of all religions the world ever knew; the religion of the men of the most enlarged, acute, patient, scrutinizing, and capacious intellects the world has ever seen, Philosophers, Scholars, Judges, Poets, Moralists, and Statesmen.

I will say here what was said on another occasion by an eminent advocate, (Erskine, in Thomas Williams' trial, 26, How. State trials, p. 661).—"In this stage of the proceedings, I shall call for reverence to the sacred scriptures, not from their *merits*, *unbounded* as they are, but from their *authority* in a christian country—not from the *obligations of conscience*, but from the *rules of law*;"—premising, that whatever your own opinions may be upon the expediency of the law, you cannot usurp the province of the legislative power and repeal that law. The real question is well laid down as follows:—The business of a Juror is not to consider what is the kind or degree of toleration which he would himself be inclined to extend, but what is that which the law has granted—not what he would do if the question were left to his own discretion in the exercise of his duty—but what the Legislature has *authorized* or *forbidden*. 3 Merivale, 399. "The general faith is the sanction of all our moral duties, and the pledge of our submission to the system which constitutes the State;" and if our Constitution and Laws are to be preserved, it must be by preserving that general faith on which they are based.

We have then a positive, definite Statute Law, which it is our duty to enforce. It was passed on the 3d July, 1782, and is entitled "an Act against Blasphemy."

(The whole Statute was here read.)

It is possible that the meaning of some words may be questioned. Their signification will therefore be taken from the best sources. Dr. Webster in his Dictionary says, *To blaspheme* is to utter blasphemy,—to speak of the Supreme Being in terms of impious irreverence—to speak evil of—to utter abuse or calumny of.—*Blasphemy*, he says, is an indignity offered to God by words

---

\* "A person offending under the Statute is still indictable at Common Law." Starkie on Slander, p. 449.

or writing; that which derogates from the prerogatives of God. In another book (Hume on crimes) it is stated that *Blasphemy* consists in the denial of the being, attributes, or nature of, or uttering impious or profane things against God, or the authority of the Holy Scriptures. It is committed by uttering such things in a scoffing and railing manner, &c.—The word *wilfully* in law means intentionally—done on purpose—not accidentally,—or unconsciously.

But the Statute itself on which this prosecution is founded undertakes to define what amounts to blasphemy.

I consider this Statute, being in full force and unrepealed, as establishing as a part of the Law of this Commonwealth these propositions.

1. That there is a God—whose name, it is possible, to blaspheme.
2. That denying or contumeliously reproaching God is wilfully blaspheming his holy name.
3. That denying his creation, government, or final judging of the world is blaspheming his holy name.
4. That reproaching Jesus Christ, is blaspheming the holy name of God.
5. That reproaching the Holy Ghost, is blaspheming the holy name of God.
6. That reproaching the Holy Scriptures, is blaspheming the holy name of God.
7. That exposing the Holy Scriptures or any part of them, to contempt and ridicule—is blaspheming the holy name of God.

The Statute asserts these seven propositions as clearly as language can express them.

There is but one crime stated—one *corpus delicti*—that is—*wilfully blaspheming the holy name of God*—that is the only thing prohibited directly by the Statute. But in order to prevent any misconstruction of what is blaspheming the holy name of God, the Legislature go on to point out what they mean by it, by showing *how* it may be done, and several ways are enumerated, every one of which, they declare, to be blaspheming God, showing that it may be done by denying his existence, &c.

Here then, Gentlemen, is a positive, plain, explicit rule of law, establishing a rule of conduct binding on every person living in this Commonwealth.

But I have heard from rumor, that one part of the defence to be made in this case by my learned friend, if not the whole defence, is to be placed on the ground that this Statute is unconstitutional, and *therefore* not binding upon any body. This is very easily said, but it will be very difficult, if not wholly impossible, to prove it. I deem it proper now to anticipate that point of defence, because the Gentleman who advocates the defendant's cause, ought to be informed by what reasons and arguments I shall maintain the constitutionality of the Statute, that he may have an opportunity to answer and refute them if he can.

The propositions I maintain, are, that the law is constitutional,

and that the Christian Religion at the time of the adoption of the Constitution, was part and parcel of the Constitution itself: and without faith in the Christian Religion, this Commonwealth could have had no Government prior to the year 1820, and no lawful convention in that year to amend the Constitution.

These propositions I shall prove from the Constitution itself.

1. In the Preamble—It recognizes God as the great Legislator of the Universe, and acknowledges his superintending Providence, and prays for his direction.

2. Next—the second Article in the Bill of Rights declares it to be the *right* and *duty* of all men in society, publicly and at stated seasons to worship the Supreme Being the great Creator and Preserver of the Universe; who is called *God* in the same Article.

3. The 3d Article provides for the worship of God, and requires parishes to make provision for the public worship of God, and the support of public teachers of religion, and provides that every denomination of *Christians* shall be under the protection of the law.

4. The 18th Article speaks of the necessity of *piety*, and observance of it *in making* laws.—Piety here means religion, and this article strongly proves the constitutionality of the law and the right of the Legislature to make it.

5. In part the Second, Chap. 1. Section 1. Article 3. at the close—Courts have full power to administer *oaths*, to witnesses. The object of an oath is to search the conscience, to make an appeal to *God* and *his justice* for the truth of what the witness says.

6. In Chap. 2. Sect. 1. Article 2d.—No person shall be eligible as Governor of this Commonwealth, unless he shall declare himself to be of the *Christian Religion*—that is the Religion of Jesus Christ. This Article clearly incorporates the Christian Religion into the Constitution.

7. Chap. 2. Sect. 2. Art. 1.—Lieutenant Governor shall be qualified in point of *Religion* as the Governor.

8. Chap. 5. Sect. 1. Art. 1.—The honor of God, the advantage of the Christian Religion is provided for, by encouraging arts, sciences, and literature, and the ministers of congregational churches are made officers of the University.

9. Chap. 6. Art. 1.—Governor, Lieut. Governor, all Counsellors, Senators and Representatives, as a condition precedent to entering on office, shall declare that they believe in the Christian Religion. Here the whole legislative power *must have* this faith, and avow it publicly in presence of many witnesses. How could a religion be more incorporated and become part of a Constitution?

Such was the Constitution when this law was made, and who can say with any truth, that a law protecting the Christian Religion from blasphemy and reproach was repugnant to such a Constitution? In 1820, the Constitution was altered by a convention, but that convention could not have been called but by the Act of a *Christian General Court*. That convention derived its author-

ity solely from Christians. Without Christians, there could be no General Court prior to the convention, and without a General Court there could have been no convention.

See Chap. 5. Art. 10. providing for calling a convention.

The Constitution itself, the paramount law of the land, establishes the Christian Religion, makes it a part of itself, and maintains the positions I have stated—each and every one of them.

But there is another important article in the Constitution which bears on this point.

In the 6th chap. on oaths, &c. Article 6. it is stated all the laws which have heretofore been adopted, used, and approved in the Province, Colony, or State of Massachusetts, shall still remain and be in force until altered or repealed by the Legislature, &c.

The makers of the Constitution were the wisest, most knowing, and best men of the community. They must be presumed to know the existing laws.—There were existing laws in relation to religion when the Constitution was adopted, and that Constitution must therefore have reference to them. That Constitution providing that all the laws which had been adopted, used, and approved in the Province, Colony, or State of Massachusetts Bay, and usually practised on in Courts of Law, shall remain in force, until altered by the Legislature, in fact confirms and re-enacts those previous existing laws. Similar laws then are constitutional. Let us then go back and see how the law against blasphemy stood in the Province, Colony, and State—because the framers of the Constitution must be presumed to have reference to them.

Col. Laws 58, 61, 302. The *principle* of the laws has been the same from the beginning, but the modes of punishment have varied as to this as well as to other crimes; in the course of time, all punishments have ameliorated.

The Colony Laws, against Atheism and Blasphemy, remained until the Revolution. Then the Constitution was proposed, discussed most ably and thoroughly, and adopted. Then the new Act was passed, on which this Indictment is founded, within a very short time after the adoption of the Constitution, and passed too probably by the very men or many of them who made the Constitution itself, and has been in operation ever since, never obsolete, never repealed or modified.

But the Common Law, also is retained by the Constitution—having been adopted, used and practised upon in our Courts, and must therefore also be presumed to have been referred to by those wise men who drafted, and those who adopted the Constitution: and this common law is still the law of the land as to crimes and civil suits, except so far as altered by the Legislature. Also, the Constitution of the U. S. recognizes the common law as part of the law of the land, in Article 7th of amendments.

I have shown you the Statute against Blasphemy and read it at large.

But if this case fall not under the Statute, then, such an *obscene* and *Blasphemous Libel* is an offence at the common law, (Starkie on slander, p. 499,) and punishable as such in this Court, as much

as murder, assaults, perjury, and other crimes at common law; and this common law is made constitutional by the Constitution itself.

I will proceed now to consider what the common law is in relation to this subject. The general principle is, that the law will restrain and punish all open and public attacks upon religion, upon the authority of the Scriptures and upon the Founder of Christianity, BECAUSE the belief in religion, so construed, constitutes the only binding obligation among men, and its denial tends to the subversion of all law and order in society.\*

Blasphemy is not only an offence to God and religion but a crime against the Laws, State, and Government, and therefore punishable by Indictment: for to say Religion is a cheat, is to dissolve all those obligations whereby civil society is preserved; and to reproach the Christian Religion is to speak in subversion of the law.† This was said by Lord Chief Justice Hale, than whom, it has often been said, that a wiser man, a better lawyer, and one who had a greater respect for the rights and liberties of the subject, Great Britain never produced.

Sir Philip York, afterwards Lord Hardwicke, said in Curl's case,‡ every publication which reflects upon religion, that great basis of civil government and society, is indictable.

Serjeant Hawkins.§ enumerates five species of offences against God, at the common law, embracing some of the very modes of blasphemy described in our Statute law. Lord Raymond declared in Woolston's case,¶ Christianity in general is part of the common law, and therefore to be protected by it. Whatever strikes at the very root of christianity tends manifestly to the dissolution of the civil Government.

The same doctrine is expressed in the case of the King vs. Curl.¶

Lord Mansfield said (2. Burn's Eccles. Law, 218,) "for Atheism, blasphemy, and reviling the Christian religion, persons have been prosecuted and punished upon the common law."

His successor, Lord Kenyon, in Willams' case\*\* confirmed the like doctrine.

Lord Ellenboro in the case of the King vs. Eaton,†† expressed the same opinion.

Chief Justice Abbot in Waddington's case‡‡ was of the same opinion, as also were Justices Bayley, Holroyd, and Best. Best, Justice, used this language—"a work containing such arguments 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."

\* 3. Merrivale's Reports, p. 390.

† Taylor's case. 1 Ventris, p. 293. 3 Keble, p. 607.

‡ Strange, p. 789.

|| Pleas of the Crown, Chap. 5.

§ Strange, p. 834. Fitzgibbon, p. 64.

¶ 17. Howell's State Trials, p. 154.

\*\* 26. Howell's State Trials, p. 653.

†† 31. Howell's State Trials, p. 927.

‡‡ 1. Barn. & Creswell, p. 26.

The like opinions were expressed again by the last mentioned Justices in Carlile's case.\*

Lord Chancellor Eldon is equally clear upon the same subject. In Pearson's case,† he said, "prior to the Statute, Blasphemy was an offence punishable at the common law."

The same opinions are maintained in treatises upon Libel and Slander.‡

I will read a passage from Holt, p. 60.—"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, or to impair his reverence of him. A reverence for God and conscientious regard for religion, are the *main supports* of honesty, and therein of society and civil government; the sole curbs effectually restraining men from fraud and violence; and the strongest principle leading to the performance of those actions, by which common life is adorned, and public order and peace maintained."

Offences against piety and moral duty become, as it were, trespasses against the light of reason, and the law of nature—same, page 60.

How clear and extensive is the light of the common law shed from this luminous galaxy of stars, Hale, Hardwicke, Hawkins, Raymond, Mansfield, Kenyon, Ellenboro, Eldon, Tenterdon, Best, and Bayley?

Such then is the common law in relation to blasphemous Libels against God and the Christian Religion.

*Obscene* Libels are also indictable offences at common law. I will give you but one authority on this point. Holt's law of Libel, p. 72.—"The next great rule of human conduct is morality, or the law of nature. This is the great unwritten law of mankind, *having God* for its origin, human reason for its interpreter, and the maintenance of the general society of the human race for its end. Its obligation therefore is at once in its authority, as proceeding from our common parent, and Supreme Sovereign, and in its end, inasmuch as it conduces to the happiness of the particular and general condition. The common law therefore looks with a filial eye upon what it acknowledges to be its own trunk. The law of nature is necessary to society, and society must therefore maintain it. This is the reason of the law in prohibiting and punishing all open and public immoralities, *obscene* writings, &c. and the tendency of which is evidently to poison the springs and principles of manners, and disturb the peace and economy of the realm." See 2d Strange, pp. 790 and 792. 4 Burr p. 2530, Wilkes' case.

Now the common law is part and parcel of the law of this land. It is recognized in the Constitution of the United States. It is constantly acted upon, by my learned brother who is to manage this defence. He executes his office and proceeds in the dis-

\* 2. Barn. and Creswell, p. 161.

† 3. Merrivale, p. 407.

‡ Holt's Law of Libel, pp. 64, 70. Starkie on Slander, pp. 487, 493.

charge of his duty to the U. S. by constantly enforcing parts of the common law, and proceeding according to its rules—agreeably to the 7th Sect. of the amendments of the Constitution of the U. S. The common law is recognized as law in the Courts of the United States. Look at the decision of the Circuit Court held by two learned Judges, (Judge Story and Judge Pitman,) not only recognizing the principles of the common law, but also touching the existence of a future state of rewards and punishments. (5 Mason's Reports, p. 18. Wakefield vs. Ross.)

It is recognized in the Constitution of this Commonwealth, more especially in 6th Article of chap. on Oaths, &c All Laws heretofore acted upon shall continue until altered by the Legislature.

But I qualified my remark that without faith in the Christian Religion we could have had no Government according to the Constitution of the Commonwealth of Massachusetts, by limiting my assertion in point of time. I said *prior* to the year 1820. It must be well known to all of you, Gentlemen, that in that year the Constitution was revised by a Convention chosen by the people of the State for that purpose.

Now upon the subject we are discussing no alteration was made in any particular but in the form of certain oaths. Instead of the oath of allegiance formerly in use, and instead of the oath requiring a declaration of a belief in the Christian Religion as a qualification of office for Governor Lt. Gov. Counsellors, Senators, &c., certain other oaths are substituted in which no express mention is made of the Christian Religion.

This is not repealing the Christian Religion: this is not extirpating it from the Constitution, nor in anywise invalidating its obligations. It merely regulates the form of the oath of office, substituting a shorter form in lieu of two others. And this is clear, because not a single statute law has been altered or modified, abrogated or repealed in consequence of those amendments, by any one of twelve successive Legislatures, who have been fond enough of altering the laws in other respects, perhaps too forward to change the laws of the land. The statute against Blasphemy still remains, and still is in full force.

And this amendment of the Constitution, if so it must be called, can in no wise benefit the case of this defendant, because in the new Constitution or rather the new Enactment of the Constitution the 2d article in Bill of Rights still inculcates the duty of Worshipping God, and also because in the very new forms of oath, the Constitution asserts the existence and attributes of that God, (whom the defendant denies,) and recognizes his judging mankind and the world in that required and comprehensive phrase, *So help me God*—which is made the conclusive and all important part of the oath; thus requiring still in all oaths an express reference to God, and that solemn sanction and appeal to God contained in those remarkable words, the meaning of which must be—*So may God in his providence and judgement deal with me now and hereafter as I am, or am not sincere, conscientious and faithful in the oath I now take.*

The constitution then in its original form and in its amendment still lays the foundation of all security and safety in Government upon the solid Rock of a belief in the existence and attributes of God, and thus makes it manifest how great a crime against Government and the Constitution it is, to deprive the community of the safety, security, integrity, and fidelity, derived from this conscientious appeal to God, the searcher of all hearts, from whom no secrets are hid, by all witnesses and officers who undertake to discharge any public duty. How extensive and immense the injury to the public welfare would be, if this restraint, this hold on men's consciences and creed were removed or even ridiculed, must be apparent to every one, who considers that up to this hour no person holding a Civil, Military, Judicial, Executive, State, County, Town, Parish, or other public office can enter upon, or perform any act of any one of said offices, before they have made formally, solemnly, sincerely, and conscientiously this direct and awful appeal to the Omnipotent, Omniscient, and all perfect Judge of the living and the dead.—My learned friend, who is to conduct the defence in this case, whatever he may say in your hearing this day, as counsel for the prisoner, has repeatedly as a man and as a public functionary, made that solemn appeal to God, as attorney of the Court of Common Pleas, as a counsellor at Law, in the Supreme Court, as a Representative of this City in the Legislature, and in other high and honorable Offices which his patriotism has induced him to accept for the good of the people.—I hope he will not prove himself recreant from that oath this day. The Honorable Judge who presides in this Court, the Clerk who keeps its records, the Sheriff who obeys its commands, the Constables who are its inferior agents, the Witnesses who testify before it, you yourselves who sit as Jurors in those seats to administer justice between party and party, between the Commonwealth and the prisoner, all of us have laid the foundation of our duty in that solemn and awful appeal to God that he will reward or punish us hereafter, as we do right or wrong in our office. The crime of this defendant is his open, indecent and wilful, public attempt to deprive the community of this solemn security, by ridiculing and denying that God. And who will say this is no crime?

The common Law, the statute Law and the Constitution thus all agreeing that Government depends upon Religion and the Christian Religion as its basis, and as the strong foundations of morality, duty and Law, I proceed to consider 3dly, the importance of enforcing these Laws—the absolute necessity for the safety of the public, and for all proper discharge of official acts that this belief in the existence and superintending Providence of God, should be preserved and not attacked, ridiculed or disturbed. The importance of true religion to all civil Government has been stated. Morality and justice are built upon it. There is no Government that does not derive most important aid from it. One Nation indeed in its mad folly decreed that there was no God, and they lived a few years without any religion. And what was the disastrous consequence? Let the History of Revolutionary

France tell? The experiment was fairly made and the horrible results are well known. No other nation ever has and we predict never will follow that example.

If this be so, then every attempt to destroy religion where it prevails throughout the community, is flagitious—is wicked—and has a direct tendency to destroy those salutary principles, morals and manners, which are the safety and security of the public peace, and of individual happiness; and such attempts should be restrained by positive and severe enactments. The Legislature have done this, and it is the duty of every moral man, of every man of principle, to obey the laws. If the Law is not a good one, let it be repealed. While it remains the Law of the Land, it stands upon the same ground of all other Laws, the Law against murder, against duelling, against robbery, theft, forgery, and every other crime. It has the same sanction, and we are under the same obligation to obey and enforce it. Indeed this Law of all others seems to require most exemplary enforcement, because it protects all other Laws. The administration of justice essentially depends on the enforcement of this Law. Destroy religion, blaspheme God and the Saviour, ridicule the Holy Scriptures, cause it to be universally believed that death is an eternal sleep, and there is no state of future rewards and punishment; and what security has the Commonwealth or the Prisoner that you will give a true verdict in this or any other case, or the witnesses swear truly, or the judge deliver the law conscientiously to you? I will put a question to you which was once put to another Jury;\* “If the religion that is vilified and brought into question is not previously adopted in belief and seriously acted upon, under what sanction does the Judge here discharge his duty, or do the witnesses testify, or what obligations are you under, representing as *you* do, 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 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? What *Hereafter*? That God undoubtedly, who has commanded Governors to rule and Judges to decree justice—who has said to witnesses, not only by the voice of nature but in revealed commandments, “Thou shall not bear false testimony against thy neighbour.”

If this Law then should be enforced in any case, the present is one that peculiarly demands animadversion.

There have been other infidels—Hume, Gibbon, Voltaire, Volney, &c. but the works of those persons were read only by men of literary habits—necessarily a few—and to men of sound understanding they carried their antidote with them. But here is a Journal, a Newspaper, cheap—and sent into a thousand families, &c. Where *one* man would be injured by Hume, Gibbon, or Volney, a thousand may be injured by this Newspaper so widely cir-

---

\* By Erskine in Williams' Trial, 26 State Trials, p. 665.

culated, so easily read—so coarsely expressed—so industriously spread abroad.

It was well said of those great writers, that “their fault was, to carry their idea of God to the perfection of human intellect, and then to disbelieve all revelation from heaven, which was not perfectly intelligible to that portion of intellect which they possessed. It was the vanity of man against the omnipotence and omniscience of God.”\* Now the reverse of this, is the case here. God is either blotted out of existence, or most indecently and with unbecoming levity called an Old Gentleman, and a most irreverent comparison made between him and President Jackson.

I will not repeat or comment upon the most gross, scandalous, and indecent passage respecting the Saviour set out in this indictment. It is too shocking to all Christians, too obscene and too revolting to decency, to be discussed here.

If the Christian Religion has civilized, improved, and blessed every nation where it has flourished—

If the manners and morals of Christian communities are better in every respect, than those of Savages, Idolators, and other Infidels, and heathen of ancient or modern times—

If a sincere Christian is a better man in all respects, than men who live without God in the world—

If the Christian Religion affords hope and consolation to the afflicted, the poor, the sick, and the dying—

If it be the source to millions of people, of present happiness, and of hopes of future joy—

If it supports the laws of the land, gives its sanction to judicial proceedings, is a surety for truth, and fidelity, and honest discharge of official duty—

If it be a part of the law of the land, promulgated, and established in numerous passages in the Constitution, declared and supported by the Statute Law of the Commonwealth, recognized and incorporated by the common law, into its own body as part and parcel thereof, and so declared by the wisest and most learned Judges and Lawyers—

If for centuries it has withstood the assaults of open enemies, and the treachery of false friends—

If, to say nothing of the ten thousand talented Clergymen, who have demonstrated its copious proofs to the world, and whose works have been the satisfaction, delight, and admiration of all ages—

If it has met the approbation and honest conviction of the brightest and wisest among laymen, of the most sagacious, shrewd, learned, and diligent minds, who applied all their intellectual faculties to test its truth and excellence—the almost super-human Newton, the philosophic Boyle, the great metaphysician Locke, the acute Sir Matthew Hale, the noble minded Milton, the elegant Addison, the great moralist Dr. Johnson, the accomplished and learned Sir Wm. Jones, our own Washington, Parsons, and many others too numerous to mention of the greatest and wisest philosophers, scholars, and gifted men—

---

\* Sir Vicary Gibbs. 31 State Trials p. 958. Rex vs. Eaton.

“If you find all that is great or wise, or splendid or illustrious among 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 clashing opinions, yet joining as it were in one sublime chorus to celebrate the truths of christianity, laying upon its holy altars the never fading offerings of their immortal wisdom—”\*

If one hundred millions of men believed this Religion to be holy and true, and the truth is daily spreading wider and wider—if all these things be so, I think *for itself* it need not fear the attacks of Robert Owen, Fanny Wright, or Abner Kneeland, or any of their conceited disciples, wise in an extravagant degree in their own conceits, inflamed and swelling on the dregs of infidelity, left them by a tribe of miserable predecessors, in which there is nothing new, nothing that has not been a thousand times refuted;—I say *for itself* Christianity has nothing to fear from such vulgar attacks and indecent ridicule. It has been assailed by wicked men for centuries, and yet has kept a uniform, steady, forward progress, for ages, and at the present day all other religions are bowing before it—Mahometism in Europe and Asia—Idolatry in India and the Pacific Ocean—Cannibalism in Africa, and every species of false religion in all parts of the world. Christianity has withstood the attacks of Julian, and other Apostates, of the Infidels of the early ages—the force of all the political power and intellectual efforts of the Roman Empire, the mistress of the world—the more modern attacks of Hobbs, Tindal, Voltaire, Rousseau, Hume, Gibbon, the Republic of Revolutionary France, Tom Paine, and every other enemy who has attacked it. It has kept an onward and dignified march in the progress of ages, disregarding the puny attacks of man, covering the earth as the waters do the sea. The prophecy that the gates of hell shall not prevail against it, like that living and still extant miracle, the dispersion of the Jews, is in constant development; and our Religion, I call it *ours* with pride, pleasure and gratitude, has never been more extensive, active, and flourishing in all parts of the world than it is at the present moment.

Christianity thus flourishing, thus based on the Rock of ages, thus approved and cherished by the greatest, wisest, and best of men, wants no protection from the law against the hostility of Abner Kneeland, the conceited, the poor and weak mortal now on trial at the bar of this Court; there is nothing great, or powerful, or new in the compass of his ordinary, and self-deluded, self-blinded intellect, that can prevail against Christianity in any fair or intelligent minds, who have leisure and learning enough to understand the subject, nothing that has not been refuted in the ablest and clearest manner. He is not prosecuted *on that* account. He may reason candidly, and fairly, and decently as much as he pleases—the law prohibits not that—but it does forbid public Blasphemy.

---

\* Erskine in Williams' Trial. 26 State Trials, p. 668.

The law does say, that no man shall in a scurrilous, indecent, scandalous, obscene manner blaspheme God or the Christian Religion as contained in the Holy Scriptures. He shall not treat the faith and opinions of the wisest men with the most shocking contempt, and stir up men without the advantages of learning and patient sober thinking to a total disbelief of all things hitherto held sacred, and to a rejection consequently of all laws and ordinances of the State, which stand only on an assumption of that truth; that when the Constitution and Laws establish the existence and providence of God and the Christian Religion and recognize them as part of the Law of the land, no man shall impiously and contumeliously reproach them—no man shall in a vulgar, sneering and scoffing manner promulgate doctrines destructive of the peace of society—and subversive of the happiness of individuals composing it—shall not take away the sanctions of oaths, shall not sap the foundation of justice and official duty—shall not deprive men of the reverence they feel for God and religion, shall not rob them of their present consolations and future hopes, shall not remove the moral and religious restraints which a belief in God and Christianity imposes.

This is what the Law prohibits, and this is the offence charged in this Indictment against this defendant, and this offence of his, is aggravated by the vehicle in which he conveys this moral poison—a Newspaper easily circulated, soon read, and finding its way to the poor and unlearned, to those who have not learning nor leisure enough to consider and refute its falsehoods—an offence also aggravated by his pampering that depraved appetite which vulgar and illiterate minds are apt to have for obscenity and gross scurrilousness, and which all Courts, as *moral Boards of Health*, ought to denounce and restrain.

The religious and moral sense of the people of this happy land is the great anchor, which alone can hold safe the vessel of State in the mighty current of human affairs, which always is flowing and always is strong, and amid the storms which agitate the world—and if the mass of the people were debauched from the principles of religion, which are the true basis of that humanity, charity, moral sense and benevolence, so long our national characteristics, the prostration of our excellent Constitution and laws would soon follow.

These are interwoven together. All the great officers of the State were obliged to declare their belief in God. The oath recognizing his existence, and providence was an indispensable qualification—a condition precedent to their eligibility—a *sine qua non* to their inauguration.

This Law, the Statute on which this prosecution is founded, stands fixed and deep rooted in the Constitution, and cannot be abrogated without tearing away the very foundation of the Constitution. You are not assembled here to repeal a law, nor to subvert the present Constitution, nor to make a new one. The Legislative department is to be kept separate from the Judiciary. 'Twould be a most dangerous usurpation of power in a Jury to vote themselves into a Legislature and to make laws instead of

obeying and enforcing them, or into a convention to amend the Constitution of the State. You are chosen and delegated for no such purpose. You ought to have here on this occasion "no will, no mind, but a legal will, a legal mind." We ask of you this day nothing, but the fair, manly, conscientious discharge of your duty as Jurors sworn to try this issue, under the existing laws of the land, and appealing to that God, who is over all, that you will discharge the duty now imposed on you by the law, and now undertaken by you, in that careful, discreet, rightful, sincere and conscientious manner, which, acknowledging his existence and attributes, will entitle you to his favour in that awful hour when you most shall need his help.

I ask you on this solemn occasion, in the discharge of this solemn duty, to cast away all prejudices of every kind, to consult reason and conscience only, and to consider an address to your *prejudices*, if any be made, as an insult to your understanding, an unworthy attempt upon the firmness of your integrity. There remain some general and important topics involved in this trial of which I would speak briefly, to prevent misunderstanding.

1. The rights of conscience—

I would not impugn them—They are guaranteed by our Institutions—use yours as you please, but leave me mine—abuse not, vilify not, obliterate not my creed—that you have no right to do—offend us not by obscene blasphemy—we have a right to be protected from insult and not have our feelings hurt by offensive and disgusting obscenity. Such is the true construction of religious freedom.

2 The liberty of free discussion.

We indulge it to the utmost latitude—we ask only that it be decent—that it be fair—that it be sincere—that it violate not the laws of the land.

"The Law does not forbid reasonable controversy even upon fundamental subjects, so long as it conducted with a tone of moderation which shews that argument is the only purpose; the writer abstaining from language and terms which are abusive and passionate and therein indecorous towards the establishment and offensive to the consciences of individuals. When the law is moved against abusive and passionate writers, it is not persecution, it is a defence of the public tranquillity." Holt's Law of Libel, page 70.

3. The liberty of the Press—

We admit and would support it to the fullest extent—"It has led to many of the blessings both of religion and government, which the world enjoys, and is calculated to advance mankind to still higher degrees of civilization and happiness." But restrain its licentiousness—It may be the engine of mischief as well as of good. It is the liberty of fire arms—the liberty of the sword—of the element of fire, to be righthfully and *lawfully* used on proper occasions, but not for murder or assassination, for mischief or malice on persons or reputation.

The true freedom of the press allows no seditious libels, no ob-

scene libels, no malicious libels, no blasphemous libels. Unbounded liberty of the press is allowed, provided, (as said by Erskine in Williams' Trial, 26 State Trials, pp 663, 664,) that "common 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 understanding of men." Every man has a right to investigate with decency controversial points of the Christian Religion, but no man, consistently with a law which exists only under its sanctions, has a right to deny its very existence, and to pour forth such shocking and insulting invectives as the lowest establishments of civil authority ought not to be subjected to, and which would soon be borne down by insolence and disobedience, if they were. A standard author on this subject, (Starkie on Slander, p 558) says on this point, "The right to publish the truth in general is plainly distinguishable from the right to publish when the publication is likely to be attended with mischief; in such case the Publisher cannot but be considered as the author of those consequences which, knowing the infirmities of human nature, he caused to exist."

#### 4. Toleration—we tolerate all creeds.

A book that in my opinion contains more truth than any other book ever published, has said "The fool in his heart saith there is no God." While the fool says it only in his heart—we tolerate him—we pity his folly—we pity his blindness. The Heavens above, the earth beneath declare the glory of God and all that therein is. "An undevout astronomer is mad."—A man must be a fool indeed, who in the works around him sees not proofs of Nature's God—all nations believe in a God. All creation shows wisdom, design, calculation, adaptation of means to end—not an animal, not a blade of grass or vegetation, not a limb or part of a man's body, but what demonstrates the Being, wisdom and goodness of God. So of Christianity; eighteen centuries ago it was *foolishness* to the Greeks, but it has constantly, clearly, eminently ever since been the power of God and wisdom of God to all who believed. Still the fool may say *in his heart*, if he pleases there is no God—but the moment he publishes it and vilifies God—that God in whom others believe, whom the laws of the land recognize, then his folly passes into crime, and he becomes amenable to the law, as he endeavors to root up the foundation of moral obligation, the sanctions of oaths, the safeguards of truth and virtue, the consolations of life, the hopes of eternity. The most valuable of human blessings is *religious belief*. This is not my opinion alone; millions of people have experienced its truth; but I am not aware that any body has expressed the sentiment better than a very modern philosopher, the late Sir Humphrey Davy, whose talent in investigating philosophic truth was of the highest order. In one of his latest works, he says,—I envy no quality of the mind or intellect in others; not *genius, power, wit or fancy*;—but if I could choose what would be *most delightful*, and I believe most useful to me, I should pre-

fer a *firm religious belief* to every other blessing, for it makes life a discipline of goodness—creates new hopes, when all earthly hopes vanish, and throws over decay, the destruction of existence, the most gorgeous of all lights, awaking life in death, and from corruption calls up beauty and divinity; and far above all combinations of hope calls up the most delightful visions of palms and amaranths, the gardens of the blessed, the security of everlasting joys, when the skeptic and the sensualist view only gloom, decay, annihilation and despair. In “*Salmonia*.”

5. We deprecate religious persecution. We ask only for maintainance of the laws of the land. We would have nobody persecuted for religious creeds. We ask only that they should not withhold the same liberty from others, should not attack violently and maliciously the faith of others, and should not obscenely or indecently publish libels upon *all* religions. If they choose to believe nothing themselves, let them not deprive others of their heavenly hopes, let them not sap the foundations of morality and law.

6. There is one other subject I wish to speak about, before I proceed to the testimony, and that concerns what the law deems malice in matters of Libel. But I shall content myself with a few positions.

If the obvious tendency of a Libel be to disturb the public safety and tranquillity, in the absence of all means of justification, the author must be presumed to have contemplated those consequences. Starkie on Slander, p. 559.

“A malicious and mischievous intention is the broad boundary between right and wrong, and if it can be collected from the *offensive levity* with which so serious a subject is treated, or from other circumstances that the act of the party was malicious, the publisher becomes amenable to justice.” Starkie on Slander, p. 407.

“A Defendant’s malice consists in his intention to effect the *particular mischief*, and what he intends to do must be inferred from what he has done.—If the very terms of the document itself tend to scandalize, degrade and injure, the intention must be inferred without extrinsic proof.” Starkie on Evidence, part 4, p. 880.

Whether a particular publication be so far noxious in its bearing and tendencies, as to amount in the abstract to a Libel, is a pure question of law, just as much as what constitutes an assault. Starkie on Evidence, part 4, p. 882.—Justice Ashurst, speaking of Paine’s *Age of Reason*, said it could have proceeded only from a cool and *malignant* spirit. Holt’s Law of Libel, p. 70.

But upon malice in Libel, I cannot explain this subject better than by reading a page from Holt’s Law of Libel, pp. 46–7–8.

4thly.—I am now to proceed to the testimony in this case. This is very short and concise. I shall call but a single witness. He will prove the publication of this obscene and blasphemous Libel by the defendant. This proved, the Libel itself will prove its own blasphemy and infamy. Not a single innuendo is necessary to be placed on this record to explain the meaning of the

Libel. I regret the necessity I shall be under, of shocking your feelings by reading it in your hearing to prove that it is correctly stated in the Indictment. Nothing but official duty should oblige me to read it aloud anywhere. Before I call the witness, not knowing what may appear in evidence on the part of the defendant, I must beg leave to call your attention to two more principles of law which may have a bearing on the case.

The copying of a Libel is *prima facie* evidence of publication, this extends to republication of another's composition. Hawkin's P. C. vol. 2, p. 131.

The Proprietor and Editor of a Newspaper is criminally answerable for a Libel inserted *without* his knowledge.

By Lord Kenyon, who said that also was the opinion of Lord Hale, Justice Powell, and Justice Foster. 3d. Espinasse, p. 21. Rex vs. Walter.

(Called the Witness here and proved the publication by defendant.) When I shall have read the Libel, I will not insult your understanding by any remarks to show its blasphemy. If it contained any one passage blaspheming the holy name of God, in any *one* way pointed out by the Statute, it would be enough to prove the defendant's guilt. But you will see it is blasphemous in all and each of those ways. (Mr. Dunlap, defendant's Counsel here agreed the reading of the Libel might be dispensed with, and admitted it was correctly set out in the Indictment.)

I have now, Gentlemen, laid this case before you on the part of the Government. I deem the guilt of the defendant fully demonstrated upon the law and the testimony. What kind of defence the prisoner's Counsel can make, you will judge when you have heard it. Probably the Society over which the prisoner presides, have furnished him with all the arguments he wants. I should have been happy to have received the assistance of any body in this important case. Who was the cause of putting this Libel into prosecution I know not. I have been left alone to discharge unaided this official duty, without communication with any body. I rely on God, in whose service as well as in the service of the Christian people of this Commonwealth I appear to-day, that he will bless my humble efforts in a cause so important to a moral and religious community. I have attempted to do my duty. I pray that he may guide you, in yours, and so help you, as you are firm and faithful in the discharge of your duty this day to God and your country.

Mr. Parker occupied about two hours in this opening address; after which Andrew Dunlap Esq. in behalf of the defendant called several witnesses to prove the general character of Mr. Kneeland for good morals, and he then entered upon the defence in a splendid oration, which he was three days in delivering to the Jury, having commenced at twelve o'clock on Tuesday, and concluded at four o'clock on Friday afternoon.

FRIDAY AFTERNOON 4, P. M.  
January 24, 1834.

Mr. Parker, in behalf of the Commonwealth, in the close addressed the Jury, as nearly as can be collected from some notes and recollections, as follows :

Though it was laid to my charge, Gentlemen of the Jury, a few days ago, after I had first spoken to you in this cause, that I had occupied *four* hours of your time, it was in truth rather less than *two* by the clock ; and if the Gentleman, who conducted the defence and made that charge, had it then in his contemplation to address you for the unexampled duration of three days together, I think the complaint from him, that I had occupied *one hundred and twenty minutes*, was not very reasonable or candid.

When I addressed you in the opening of the cause, I could not refrain from expressing my sincere regret in coming to it with so little preparation as the pressure of other duties permitted :—and, after hearing the very elaborate, diffuse, and occasionally eloquent and splendid argument, which for the last three days has been addressed to you by the learned, voluble and zealous Counsel of the defendant, an argument which has gone into almost every field of polemic divinity, and almost every department of constitutional and technical law, which has embraced in its circuit all the ages, climates and almost every nation of the habitable globe, which sometimes has risen to the highest flights of impassioned oratory and frequently corruscated with the flashes of genius and the brilliant lights of fancy:—after listening for days to an argument so premeditated and refined in behalf of the Prisoner, you must now, at least, Gentlemen, be sensible that the present is a case which needed some careful preparation on my part in order to meet and refute such a laboured and studied defence. The very nature of the prosecution involved the discussion of some of the most important rights of man, and touched some of the most vivid and delicate springs of human action. The question of the expediency of such a prosecution was no question for me to suggest, or the Grand Jury to decide, any more than it is for you to discuss. The law and the testimony were placed before us as they are now before you ; and we were called upon to discharge our duty to the Commonwealth, as you also are now under oath to do yours. It was a business we could neither shun nor neglect, whatsoever our own opinion might be upon the expediency of presenting an Indictment, which was to give rise to such an argument as you have heard. For my own part I have no misgivings upon the result of such an inquiry. The cause of truth, of law, of Christianity, never should be neglected, because some timid minds are apprehensive that evil may grow up while we are pursuing a desired good, or checking a palpable evil. But such ap-

prehensions naturally put us on our guard to conduct the investigations in a suitable and careful manner, and upon proper principles and motives. In the opening of this prosecution therefore, I was far more desirous to explain the true grounds and constitutionality of the statute, and the propriety and necessity of repressing its violation, than I was of making a parade speech, or of indulging in the rambles of declamation, the sallies of wit, the gratification of political partialities and prejudices, or the display of personal attainments and learning. I felt that a serious and weighty business was on hand and was to be done upon the personal and accountable responsibility of every one who was engaged in its performance. I conscientiously wished to have had an opportunity to make a better preparation for my share in it, and in no particular to be deficient in a cause involving the highest interest of man in connection with God, his Maker and Preserver; and although, if I had had all the time and leisure and assistance necessary to an exhibition for public admiration, which my friend on the other side has had since his retainer, I should have fallen far short of his eloquence and splendour, yet I could have been better satisfied with my own efforts, and probably would have better satisfied the friends of the cause of truth, religion and law. In such a cause indeed nothing should be left undone which could be done to insure the triumph of Christianity over atheism and impiety, and to secure the preservation of all that is dear to our hearts and hopes from the malevolent attacks of folly, malignity and infidelity. No man who had the interests of such a cause in his heart could waste a thought about personal display, or yield to the paltry ambition of popular applause. He would lose all thoughts of himself, and give his whole mind to the great and virtuous object in view, the suppression of scandalous impiety and the bringing to condign punishment open, gross blasphemy, an object to be zealously pursued by all good men for the best interest of mankind and for the honor of God. I looked therefore upon this cause as one which demanded a clear, full and positive demonstration and explanation of the statute law, its foundation in reason, and its conformity to the constitution; and I felt and urged the necessity which existed at the present time and in the present obscene and outrageous case, of preventing its bold and barefaced violation to escape with impunity. Commencing this trial with these feelings, which should be condemned by no one, I had cause to regret, that the gentleman at his outset should have thought it proper or decent to find fault with the mode of opening the cause, as unprecedented in this country, and deserving the opprobrious comparisons which his unrestrained fancy, surely not his better judgment so profusely poured forth. Conscious of having kept within technical rules, and assured by my professional friends around me, that there was no departure from propriety or customary practice in our Courts, I shall disdain to reply to the unmerited allusions. I was in fact at a loss to ascertain of what the gentleman complained until he advanced far in his speech some hours after he began it, and I finally discovered

that the head and front of my offending was, that I assumed his client was an Atheist and an Infidel before I had proved it. I assumed nothing that was not on the record, nothing of what the evidence was not in court, nothing that was not notorious and known to thousands. I believed that the Libel set forth in this Indictment, (the publication of which over the signature of the defendant I knew could not, and would not be denied,) contained clear and satisfactory evidence of gross and rank atheism, and I believe so still, notwithstanding the very elaborate and ingenious glosses and deep studied and minute criticism, by which it is endeavoured to be explained away. It is in accordance with the defendant's disbelief and infidelity as avowed in the other parts of the same libellous publication; and I think I can pledge myself to make you and every rational man who hears me believe this was his meaning before I close my address to you. I am indeed glad, very glad to hear it disavowed so decidedly by the counsel in this great and mixed assembly on this solemn occasion, but I should be more glad if I could believe it would be as openly disavowed by his atheistical client in *Julien Hall* or in the *Boston Investigator*. I rejoiced too, Gentlemen, that there was a disavowal also by the counsel in behalf of his client of all approbation of his client of the two first pieces set forth as libellous blasphemy, the obscene piece and the highly objectionable article on prayer; but I should have been more rejoiced if that client had made those disavowals in his newspaper or elsewhere, *before he was indicted*, or before he was brought before this Court for his offence, and there was abundant opportunity to have done so, had he been so inclined. Still, if he is sincere now, it is some sign of returning virtue; and as he has the reputation of having traversed the whole compass of religious belief, remaining a while upon most creeds, until he stopped at last at the lowest points of infidelity and atheism, if he has now begun in their turn to disavow and be ashamed of those sources of guilt and misery, there may be some hope, that before his hoary locks are brought down with sorrow, darkness, and gloom to the grave, the light of truth and Christianity may yet guide him on his way to that heaven, the existence and blessings of which in the hour of his folly he endeavoured to blot out of his thoughts. I furthermore, Gentlemen of the Jury, was happy to hear the eloquent counsel of the defendant express so many times in the course of his argument his own unqualified and energetic condemnation of the disastrous doctrines and disgusting matter and manner of the scandalous passages of the libel contained in the defendant's Newspaper; and it is a subject in my opinion of congratulation to our community, that no Gentleman of the Suffolk Bar could be found who agreed in opinions and in impiety with the deluded person now on trial, for it must be presumed that, if any such could have been found, he would have been preferred and appeared here this day, and not left the Prisoner to be defended by a professing Christian Advocate, who is in the strange predicament of being obliged at almost every step in the cause, in almost every breath of his

address to you, conscientiously to express in language of unusual power and strength his heart-felt abhorrence and disgust of those detestable opinions of his client. That Gentleman has said to you, that he came not here to defend or even approve of the doctrines of the defendant, that he should lose all he held dear in life, if he could believe in them, his affection for his parents, his love of his wife and children; that he thought human life was but the infancy of existence, and that there was a glorious immortality where the good and faithful would reassemble and be happy in the presence of God. I give public thanks to my eloquent friend for the elegant and forcible manner in which he expressed that sentiment, and for his beautiful eulogies upon the Christian religion, and for the delightful and well merited panegyrics he lavished upon every denomination of Christian men, Catholic, Protestant, Episcopal and Unitarian, *because* nothing could more strongly depict the folly and wickedness of such opinions as those of his client, nor more impressively paint the atrocious malignity of disseminating them among mankind. The *heart*, therefore, of this distinguished Orator, thus irrevocably condemns his client's impious system to the utmost, and must abhor and detest the infidel cause in which he is engaged; but *for the sake of his retainer*, he taxes his *head* for ingenuity and argument to extricate that guilty client from the penalties of the violated law; and the result of all his thoughts, talents and study comes forsooth to this, that there is no meritorious or excusable defence whatever that can be set up for such obscenity and blasphemy, and that his client must be found guilty of the whole charge, unless some technical ground can be found by which he may escape; and such technical ground the Gentleman fancies he has found in these two positions,

First, That the case set forth in the Indictment does not fall within the Statute—

Secondly, That if it does, then the Statute itself must be attacked and obliterated as unconstitutional and void.

If these positions are untenable, if he cannot maintain and support them beyond all reasonable doubt, if you cannot put entire confidence in them, there is no other safety for him, and the hoary headed defendant must become amenable to the law for his offences.

It is not my intention to follow the gentleman into those fields of fancy and declamation where he so gracefully sported to the admiration of all those who heard him. Were it in my power to show a tenth part of the learning he has so profusely spread before you, or to rival the thunder and lightning of his oratory, I would not be tempted on this occasion, (especially when you, gentlemen, already are so much exhausted by following him,) to display the flowers or fruits of my reading, nor the extent and brilliance of my talents. We are not here for personal contest or exhibition. I am engaged in a business far too grave and important in my own estimate, to allow the amusing myself or others with rhetorical flourishes, historical narrations, declamatory harangues,

splendid eulogiums, or lofty flights of the imagination. I am here to place before you, as men, as husbands, as fathers, as christians and as Jurors, a most serious and shocking charge against that aged man now here to answer for it to the offended law. I am here in the name of all the Christian people of this Commonwealth to place before you the laws of this land, and the proofs of his guilt, and to require of you a solemn, sincere, just and true Verdict, whether upon that law and that evidence he be guilty of the foul offence charged upon him or not guilty thereof. It is a solemn hour to him, it is a solemn hour to us all who are engaged in the serious and highly important business of this investigation and trial. If he be acquitted upon this law and evidence, it may also prove a fatal hour to thousands of human beings, young and old, male and female, married and single, rich and poor. If such obscene and scandalous attacks upon religion, being proved, are to escape unpunished, the acquittal under such circumstances will be construed into an unlimited licence to repeat and multiply such impious and disgusting publications; and the innocence and virtue, the faith and happiness of countless multitudes of human beings may be sacrificed without check or limit at the altars of folly, infidelity and crime. This case then is pregnant of good or evil; and you, gentlemen, are called upon to tell us, whether religion, law and the Constitution are to prevail, or to be disregarded and violated without remedy or prevention. We have all of us much at stake in this question, and feel its importance too much to indulge in parade or display. Our deep interest and feelings in the result of this trial will not allow us to wander about the world, to assault and attack or defend the hierarchies of transatlantic realms, the dignitaries of other Churches, the follies of some clergymen, the disputes of other Christians, the variant doctrines of different sects, the fellows of Harvard College or the directors of the Athenæum: nor can I spend time in eulogies, however well deserved, upon Catholics and Quakers, Episcopalians and Unitarians, Politicians, Philosophers, my birth place, tutors, or personal history: I cannot consent to digress in order to discuss the impossibility of witchcraft or atheism, nor to allude to the uselessness of ringing in your ears a thousand times in the course of an argument the changes upon the obsolete and disused punishments of the whipping-post, the pillory, and the gallows. It is enough to say that at this time and upon this trial you and I have nothing to do with those men and things. They are not before us for praise or censure. The gentleman who argued for the defendant touched upon almost all of them in one way or another, and for one purpose or another; and upon divers other matters and things in general, in no wise, or very slightly, connected with this cause; and displayed much wit and talent, and *high wrought* panegyric and bitter invective, and dealt them about as he pleased with imperial authority, abundance and complacency. I doubt not that many who heard him descant with fluency and exhaustless volubility upon these subjects and the others, sometimes wielding the thunder of Demosthenes, and

sometimes breathing forth the honied sentences of Ciceronean praise, were delighted with the vigour of his fancy, the extent of his reading, and the copiousness and harmony of his language, and their ravished ears, doubtless "played truant" at his eloquence. But for myself, considering *why* we are here, and *what business* we were engaged in, I could not but think, that much of his speech was out of place, that some of it in matter and style would suit the meridian of a caucus, some of it would be proper in the Hall of a Legislature, and some might be adapted to the debates in a convention for the amendment of the Constitution; very little of that high-flown, over-wrought and over-loud declamation appeared to me to be suitable to the sober, careful, precise, and solemn discussion of matters of fact and law in a judicial tribunal, concerning the commission of a crime of the horrible and detestable nature charged in this Indictment. There was so much, which to the most ordinary capacity appeared not to belong to the cause on trial, so much so loosely stated, so much founded on what seemed to me to be manifest sophisms, so much wholly unnecessary to be noticed or answered, that I will neither waste time or draw on your patience to make any reply thereto. The gentleman erected so many wind-mills in the air for the pleasure and pride of demolishing them in the high style of Quixotic chivalry, that my arithmetic, (which he attacked, and afterwards so handsomely and satisfactorily apologised for attacking) could not keep the count of them, and the numerous fragments of these edifices of his own, built by his fancy and destroyed by his argument, which are so profusely scattered about, I deem not worth picking up or considering. I am convinced that this trial has already been a most heavy tax on your time and patience, and that I need not and ought not to add much to its duration. A three days address to a Jury is unprecedented in our judicial history, and has seemed to me as unnecessary as it has been tedious. It would have produced a tenfold effect if compressed into a tenth part of its duration. Juries are much in the power as well as in the mercy of Counsel. They are obliged to hear all that Counsel choose to say, be it pertinent or irrelative, intelligible or cloudy, sensible or foolish, true or false, amusing or tiresome. I will not myself apply the remark to this case, but I have known in the course of my experience, cases in which much was said to Jurors that was intended for others' ears, much to gratify a client, a party, a sect, or to please personal friends; much that was calculated to enlarge the fee or invite new retainers—and Juries are and must be patient beings, silent by courtesy, as mutes, in Court, and, like charity, bearing all things. In some cases a little latitude is indulged and is venial, when consonant to the nature of the cause, but in graver and solemn investigations we cannot keep too close to the law and the evidence; and the present is in my judgment, one of those trials, where the importance of the subject renders all wandering out of the case improper. That I may not therefore commit the very fault I object to in my brother's example, I proceed at once to consider the serious and important

points of this issue between the Commonwealth and the defendant; and I must be allowed to say, that, notwithstanding the most extraordinary length of the defence, I deem this cause one of the most simple and easy for a Jury to decide that has been presented to them for consideration, separated from the heterogeneous mass of matters and things, in which it has been almost buried, simple on the law, simple on the testimony.

First, then, upon the evidence.

1. It cannot be denied, because it has been fully proved, that Abner Kneeland, the defendant in this cause, was the publisher of all the matter and passages alleged and set forth in the Libel as blasphemous and obscene.

2. That the first piece set out in the Indictment is a reprint of a piece from a New-York paper.

3. That the second piece is an original communication from a correspondent.

4. That the third piece was composed, written and published by him over his own name and signature.

There is no question between the parties about these facts; they are proved by the Government and confessed in open Court by the defendant. These things thus being established, the question now is as to the character of those passages. Do they, or any one of them blaspheme the holy name of God, in all or any one of the ways pointed out in the statute?

This is the same question raised by the defendant's counsel in other language in stating the first point of defence, to wit: does the case proved fall within the statute?

I shall endeavour to convince you that it does; and I will call your attention to the words of the Libel as they are applicable to each clause of the statute.

The question, you will perceive, Gentlemen, now is simply what is the purport, effect, meaning and motive of the passages alleged to be obscene and blasphemous.

The *corpus delicti*, the body, head and substance of the crime, is "blaspheming the holy name of God;" and this may be done in several ways, and proving it in *one way only* will support the Indictment.

The criminal passages in the Libel may be classed under four divisions—

1. Denying God—that of course includes the denying of his creation of, government of, and final judging of the world, which constitute four of the modes of blaspheming God's holy name as pointed out in the Law.

2. Reproaching Jesus Christ.

3. Reproaching the Holy Ghost.

4. Contumeliously reproaching the Holy Scriptures.

Now, First, I assert that the defendant is guilty under the first head, and that he openly and unqualifiedly avows ATHEISM. Notwithstanding his Counsel's assertion to the contrary during this trial, the evidence is full, satisfactory and complete that the defendant is an Atheist. I believe that I am under no mistake,

that he preaches Atheism, and has never disavowed it, or if he ever did, I am of opinion that it was only recently and for the purposes of this trial. I have a Book of his in my hand, seen by me for the first time but half an hour ago, which may affect my own judgment on this point; but I do not ask you to judge of him or of the matter now under examination from any thing but the legal evidence before you in this trial. No matter what he now says, or has in other publications said; that is not the question. I call for a judgment against him upon no evidence but what is in the Libel set forth in the Indictment.

What are the words written by his own hand and published by his direct order in this Libel?

“Universalists believe in a God, which I do not.” I maintain that these words are an unqualified avowal of Atheism, a direct and positive “denying of God, his creation, government and final judging of the world.” That is the natural meaning of the language used; the idea that strikes every rational mind upon its first perusal, without resorting to any nice analysis or grammatical criticism. The Gentleman who argued the defence is in my opinion wrong both in the law he has stated, and in the forced and unnatural construction of the defendant’s language. In his law, in that round and repeated assertion; that the Rule of construction is, that if a passage be capable of two meanings, Juries shall take the mildest and least offensive to be the true one, whereas that rule was exploded more than a century ago, and all the Courts in Westminster Hall, and all in the United States, who have tried Libels, hold the true rule now to be, that Juries shall construe the words of a Libel (they not being equivocal in themselves) to mean what mankind in general from their common use and natural import would believe them to mean. I did not choose to interrupt the Gentleman in the course of his argument upon any of the points where I thought he was mistaken or misstated the rules of law; and I beg leave, once for all, to state, that you must not suppose that I agree to the correctness of his law opinions, because I did not contradict and set right his errors the moment he made them, nor because I have not time or leisure to contradict now any more of them than I think have a bearing on the case under consideration. Nor am I going to ask you to pay any superior deference to my opinion over his. I claim no superiority whatever in learning, law, or literature above him, though I think that if his arguments go to the world correctly printed, he will get more credit for his ingenuity, fancy, eloquence, and range of reading, than for the soundness of the law opinions he has advanced upon the statute or common law, or the Constitution, in the course of this defence. Upon this point in particular, concerning the rules as to the sense in which a libel is to be construed, as upon many others, I think his zeal for his client has confused his memory or blinded his judgment.

As to the refined ingenuity he has exercised in giving an interpretation and gloss to his client’s language. (an interpretation which I believe his client never dreamt of) his reasoning seems

to me as erroneous as his law. The real question is, what upon the first perusal would men in general think, what idea would mankind receive from the words, "Universalists believe in a God, which I do not"? They would believe, as I contend to you, that he intended to convey this meaning, *I do not believe in a God, though the Universalists do.* The context shows that he was pointing out differences between Universalists and himself, and the first is, they believe in a God—I do not—that is the first difference (No. 1.) This is the natural import of the words in the libel, taking the whole piece together. Now a grammatical analysis will bring us to the same conclusion. What does the neuter relative pronoun *which* agree with? What is its antecedent? Being in the neuter gender, it refers to a thing, not to a person. A part of a sentence may be the antecedent to a neuter pronoun relative. Let us paraphrase the language. "Universalists believe in a God, which (thing) I do not believe." What *thing*? I answer the belief in a God, in any God. If he meant differently, his language would have been different. He is used to composition, a skilful and frequent writer, publishes books of his own composition, delivers lectures, corrects the press, and writes grammatically even to a comma, as his Counsel tells us. If he intended not to profess and avow atheism, not to promulgate it, his language would have been, "Universalists believe in a God in whom I do not believe"—*whom* being a masculine personal pronoun relative, referring to "a God" as its antecedent, that is, a particular God of the Universalists—or thus—"Universalists believe in a particular kind of God, in whom I do not believe"—or thus—"Universalists believe in a God, but I do not believe in a God like theirs—the God I believe in (for I do believe in a God) has different attributes from theirs."

I appeal to your common sense, Gentlemen, that when he was pointing out with studied care and precision, the precise points in which he and the Universalists differed, he would have been clear, definite, and explicit in his language, and left no double or equivocal meaning in his declaration. When men and authors undertake to write antitheses, they are exact in the points of difference. No sentences are so precise and exactly and nicely worded or weighed as antithetical sentences. It is then manifest and clear, on every view of the subject, that what he said, and what he meant to say, the idea he intended to convey to the world was this—I differ from the Universalists *first* in this, they believe in a God, I do not believe in a God—that is a complete difference between us, a difference *toto cælo*. If this is not a direct, plain, unequivocal avowal and promulgation of atheism; if this is not denying God, and his creation, government and judging of the world, then I confess that I do not yet know the force of language; and if this be a true exposition of the defendant's meaning, then his case falls precisely, exactly, within the Statute, which was now to be established; and the miserably thin, cobweb veil, which the ingenuity of his Counsel has wove to cover his client's offence, can neither hide nor shield him from the charge;

nor for myself do I believe the defendant, at any other time than now, in the hour of his peril, would wish to skulk under a subterfuge of so flimsy and transparent a texture. It may do for this occasion, in this place, to blind you, but would be scorned elsewhere, at all other times. It reminds me of a recent anecdote of a person lately objected to in this Court as a witness, on the ground of being an atheist, who, being questioned by the Judge as to his belief in a God, answered, "I believe in a God in whom we live and move and have our being,"—and after being sworn, and having testified and left the court-house, excused himself to his atheistical friends by saying he meant only that he believed *in the air which surrounded him—the material world which was about him*. Such, if this story be true, is the impious and hypocritical sanction and mockery of an atheist's oath in a court of justice.

If the evidence in the case now before you, went no further than this unqualified promulgation of Atheism, I might safely rest the case here on the part of the government, because it blasphemes God's holy name in *four* of the ways pointed out in the Statute.

But I assert, secondly, that this libel in another place, blasphemes the holy name of God, by contumeliously reproaching him. Contumelious reproach is sarcastic, sneering, gibing ridicule, insulting and exposing to shame and derision. So the best dictionaries inform us. I now, therefore, call your attention to that part of the libel which relates to Prayer. Can any man of common understanding, any human being one grade above an idiot, read that passage and communication, and not see in it contumelious reproach of God? Impossible! God, the Almighty, most holy, most sublime, omniscient and eternal God, spoken contemptuously of as a "poor gentleman," a subject of pity, more to be pitied than General Jackson!!

What scandalous blasphemy of God's holy name is this! What shameful, contumelious reproach, sarcastic and sneering derision! Who but an atheist would write such language? To whom but an atheist would an atheistical correspondent dare to send such open blasphemy for publication? Who but an atheist would approve of and consent to publish it, without comment, without rebuke? I forbear to comment on the whole extract set forth in the indictment. It speaks too plain to need a comment. Nobody can misunderstand it. It is acknowledged by the defendant's counsel to be gross and indecent, offensive and scandalous in matter and manner.

Were there nothing else in the indictment, this too *alone* would sustain it.

But, further, I invite your attention to still another part of the libel. If God exists, "and that he does, all nature cries aloud through all her works"—if he is the creator and preserver of the universe—if, as the scriptures say, and all christians believe, there is to be a resurrection of the dead, and a future state of immortality, if God is to be judge of the world, then to deny the resurrection of the dead, to assert that death is an eternal extinction

of life, to assert that there is no eternal life, is denying God, is denying his judging of the world, and this I assert, in the *third place*, clearly falls within the Statute, and would alone support the indictment. This also is too plain to need a word of any comment. Thus under the first division the holy name of God is blasphemed,

1. By avowed, palpable, unblushing atheism, denying his existence and attributes.

2. By the scandalous and impious irreverence and contumelious reproach in the objectionable article on Prayer.

3. By denying the resurrection of the dead, and God's judging the world.

A Jury that cannot see this must be as blind as Atheists themselves ; who cannot behold any proof of God in any of his wonderful works.

But I have something further for your attention, and I next ask you to look at these libellous extracts, and consider whether JESUS CHRIST is not also contumeliously reproached in the obscene and impious publication of the defendant. I think it is as manifest as language can make it. I invite your notice of two particulars.

1. He is expressly denied, and the defendant unhesitatingly declares " that the whole story about him is a fable and a fiction."

2. The obscene paragraph on the first page of the libel is a most indecent, scurrilous, sarcastic and sneering reproach on Jesus Christ.

I will not offend you by reading or commenting on it. Peruse it once for yourselves ; it will produce a horrible disgust, and an overpowering conviction of the guilt of the defendant. It was indeed remarkable, that in this remarkable defence, these passages, particularly that representing the history of the Saviour as a fable, were passed over, either without notice or as mere and harmless ridicule of the catholic doctrine of the miraculous conception. Did the libel contain no objectionable passages but these two, you would be compelled to find the defendant guilty, so full is the measure of his guilt under the charge in this indictment. You have indeed heard the authoritative tone in which the gentleman repeatedly and with apparent sincerity denied the defendant's liability *criminally* for the offensive article published in his absence. My learned brother and I are at variance upon this, as upon a great many other points of law, and you must judge between us, assisted by the advice of the presiding Judge of the Court. Though from your education and employment it cannot be expected that you are as well qualified as those who have devoted their best days to the study of the law, yet in the course of your duty you must settle this question ; and as it seems the defendant intends to have reported to the world what is said in this interesting and extraordinary trial, each of us should feel that we state our opinions of the law to you upon the further responsibility that our reputation as correct and well informed lawyers may be affected abroad by them. I have repeatedly told you I claim no credit superior to him ; but upon

this subject I repeat it that the rule of law is, that the proprietor and publisher of a newspaper is *criminally* answerable for a libel published in his paper in his absence ; and though he never saw, heard of, nor approved the libellous matter. I gave you an authority from a book of Reports, and the sound reason of the law from Holt's treatise on the Law of Libel. The sophism on which the opinion of the gentleman is founded is there anticipated and refuted. There may be legal guilt and responsibility where there is no moral turpitude. The cases are there stated and explained.

I shall not stop here to cavil about the defendant's printer's altering his testimony, swearing point-blank before the Grand Jury that the defendant expressly ordered the offensive article to be printed, and now retracting that statement. I will not believe that his supposed want of religion, nor the personal influence of his employer and his disciples have affected his testimony; nor am I so uncharitable as to think, as the defendant's Counsel seems to insinuate, that that young man believes in the atheistical and impious doctrines he prints for Abner Kneeland, and therefore ought not to be believed any where on his oath. Like the starved apothecary who sold the poison, it may be, that it is his poverty, not his will, that consents to so unjustifiable and ignominious an employment. But supposing the fact to be as now stated, it can make no difference in your Verdict ; he is criminally answerable for it ; the Verdict must still be guilty, but the punishment may be mitigated.

As to the Communication on Prayer, there is no evidence that he did not read and approve of it before he published it, and the presumption of law in the absence of such testimony is that he did both : and the other libellous piece was his own composition and published over his own signature. By the law therefore he is criminally answerable for all three pieces.

But I have not yet pointed out to you all the modes in which the defendant in the alleged libel has blasphemed the holy name of God, according to the Statute. Two more remain.

I assert then, that the *Holy Ghost* as well as Jesus Christ, is contumeliously reproached in the obscene passage, and also again in the denial of miracles, and the attributing them to trick and imposture.

I also assert that the **HOLY SCRIPTURES** are contumeliously reproached in the Libel,

1. By denying God—who is proclaimed by them as their Author, and whose existence and attributes are therein revealed.
2. By denying his creation, government and judging of the world as declared and taught throughout those Scriptures.
3. By declaring the whole story of Jesus Christ as therein narrated to be a fiction and a fable.
4. By denying the miracles therein related as true, and attributing them to trick and imposture.
5. By denying the resurrection of the dead, immortality, eternal life, and the final judgment of the world.
6. By that infamous obscene passage.

'Thus it appears to me most manifest, and beyond all justifiable contradiction, that not merely *one*, but almost *every one* of the modes of blaspheming God's holy name as pointed out in the statute, is proved, and therefore, there being no contradictory testimony, my point is fully demonstrated, that the defendant's case and guilt fall precisely and completely within the words of the statute.

The **SECOND POINT** in the defence set up by the defendant's counsel is, *that although the case and proof may and do fall within the statute, still you must acquit the defendant, because the statute is unauthorised by the Constitution, is not CONSTITUTIONAL, and is void and not binding.*

Having anticipated this point, which I had been informed was to be discussed in the course of the trial, and having expressed my views fully upon the subject in the opening of the case, I deem it unnecessary now to repeat the same. Nor have I since heard any thing said in the very elaborate and cumbersome argument from the other side, which in my judgment in any degree shakes the positions I then maintained. I called your attention to the various parts of the Constitution, its language in reference to God and the Christian Religion; its confirmation of all former laws adopted and practised upon, both the common and statute law, of the Colony, Province, and State of Massachusetts Bay: I showed you what the common law and the statute laws were in relation to Blasphemy prior to the Constitution, and pressed on your consideration that this last statute was passed among the first permanent laws immediately after the adoption of the Constitution, and was enacted by men, many of whom were members of the convention who formed and created that Constitution. I stated to you that that statute had been enforced as often as once in every five years since its date, in one County or another, within the Commonwealth, that every judicial tribunal before whom it came in question had considered it as Constitutional, and inflicted its penalties for its violation, the last and a recent case having been recently tried before Judge Wilde of the Supreme Court of this State on the Southern circuit. I reminded you that the Constitution had been before the people for amendment in the year 1820, and no objection was made to this law, and no debate introduced into the Convention in which it was hinted or alleged to be unconstitutional; that considering the many prosecutions which had been instituted under it, and the many times it has been reprinted by order of the Legislature by commissioners, those learned and vigilant men, appointed to superintend the new editions of the statutes, it ought now to be considered as settled and fixed law that it was a Constitutional statute, and as much so as any one in the book; and it is under these circumstances and with these considerations, that I now appeal to you, whether, with all these statements before you, you will undertake upon the little examination you have had on this trial, to say on your responsibility, that all those learned men who made and adopted the Constitution, those who drafted and enacted the laws in pursuance

thereof, and those who in their judicial capacity have enforced this statute in particular, have been under an error and delusion, and violated that constitution which they had sworn to support. I have too much confidence in your good sense to believe that you will be induced to come to any such conclusion by any thing you have heard this week, or on any other occasion. I know not what your religious creeds are, not of any one of you. I make no personal appeal to the partialities or prejudices upon religious subjects which any of you are supposed to have. I wish to gain no favour by compliments to any denomination of Christians, but desire only the fair exercise of your manly judgment and unprejudiced conclusion, the unbiassed influence of reason and fair deliberation, in such a trial as this. If you are Christians of any sect, if you believe in the existence and attributes of God, to whom you yourselves have appealed for the honest discharge of your duty this day, as he shall help you hereafter, it is all that I can wish or the law expect of you on this trial; and I must take occasion to express my dissent at least, not to say reprobation, of some of the remarks that have been made to you by the Gentleman on the other side, in reference to the statute in connection with your individual creeds. I wish to disabuse your minds in these particulars. The Gentleman with his accustomed energy and loudness said, that if there was an Unitarian or Universalist within your pannel, he could not give a Verdict enforcing this law without committing treason against his own conscience. This argument is neither correct nor fair. Whether a man has blasphemed the holy name of God in any of the modes of doing it pointed out in the statute, or has not, is a simple matter of fact, as much as whether a man has stolen a piece of personal property, or not: and, whatever your religious creeds may be, if you are honest and true men, if the fact be proved, you as Jurors must say so, or violate truth; and I can conceive of no greater treason to conscience, than the giving of a false verdict, after you are sworn to give a true one. Nor can there be any mistake concerning what facts constitute the offence of blaspheming God's holy name, because to prevent any such mistakes, the statute is very explicit in enumerating and describing those facts. This is so clear, and the Gentleman in the defence was so much oppressed with a sense of its weight and force, that he resorted to what I considered a desperate plunge to escape from it. He said that the Legislature had no power, right, or authority to make a law against blasphemy, nor to define what constituted blasphemy, and that you of the Jury were of the people, the Country on which the defendant had put himself for trial, and might blot this law out of the Statute Book, if you should think it was wrong that it should be there.

Gentlemen, the law commits to Juries no such power. It is absurd in my opinion to suppose Juries in any circumstances are above the law and constitution, and may abrogate both if they please. You cannot repeal the law, even if you should dislike it; and you are in duty bound to sustain this prosecution, if the facts

on which it is founded be proved, whatever your religious opinions may be. It seemed to me a very strange argument, though boldly advanced by the prisoner's counsel, that because God is incomprehensible and past finding out, therefore the Legislature cannot pass a law to prevent blaspheming his holy name. It seems to me it might as well be said, that the Legislature cannot pass a law against murder for the protection of human life, because they cannot tell how the material and the thinking parts of man are combined together, or any other undiscovered truth in his physiology. It is quite new to me, that there are not many essential parts of religion common to all Christians. I have believed and do believe, that atheism and blasphemy are detestable to Christians of every creed, and that men of every religious denomination can unite under this law, and *conscientiously* give a verdict according to the evidence against an open blasphemer of God's holy name. The Catholic and the Protestant, Calvinist and Universalist, Trinitarian and Unitarian, all have many points in which all of them agree, and they can, and ought, and must, conscientiously discharge the duty they each owe to the Commonwealth, to their wives, children and fellow citizens, by finding and returning a verdict suppressing and punishing the dissemination of atheism and blasphemy, if the evidence in the case justifies and requires such a Verdict. The *argumentum ad hominem*, so adroitly introduced into the defendant's counsel's speech, the appeal he made first to those of you of one persuasion, then to those of another creed, may possibly have the effect to introduce doctrinal controversy, disagreement and division among you; but, on my part, I beseech you, Gentlemen, to let alone all other discussions when you go to deliberate on this case, but the law and the evidence belonging to it. Priestly and Belsham, Jefferson and Stuart, Cartwright and Everett, Dean Swift and the bench of English Bishops, Mr. Ware and Dr. Channing, the Bramins and Pundits of India, the Incas of Peru and Pizarro, the Chinese in priestly vestments, the Idolater and his Gods, the works of his own hands, are not before you. You are not sworn on this occasion to decide with praise or censure any thing about them or any of them. There is no issue pending between the Commonwealth and this defendant concerning them or their creeds. We are not here to day to discuss their respective merits, follies or opinions. Do not, I earnestly beseech you, do not let these names or persons, pressed before you in such multitudes and rapidity, prevent your seeing and abhorring Abner Kneeland and his detestable dissemination of obscenity, and impiety and blasphemy. You are to look to him this day and his deeds. Let not the flitting *phantasamagorie* and magic lanthorn, which for three days together have been made to dance before your eyes, altogether divert your attention from him, or blind you to his aggravated offences. Take not up the apple of religious discord, which seems almost purposely to have been flung among you. Let not this defendant, who may be considered from his acts and doctrines to be the *common enemy of the human race*, succeed in his defence

by that subtle device, used on so many occasions by the Roman and Gallican republics, "*DIVIDE ET IMPERA*,"—*divide and thereby govern*, gain your point by sowing discord among your adversaries.

I would now proceed to caution you, Gentlemen of the Jury, against a great many more things urged in this most extraordinary defence, were I not convinced that your patience is exhausted.—There is also other business of this Court assigned for tomorrow, and this cause ought in reason to have some end. I must and do rely upon the spontaneous risings of your own good sense to refute a vast mass of what has been addressed to you in behalf of the prisoner, and reject a still greater quantity as wholly irrelevant to the issue which you are to try, which after all the parade of the hundred and fifty books, and all the harangues, which you have seen and heard, you will find to lie in a narrow compass.

But I cannot pass over without a notice a very extraordinary argument drawn from the Naturalization Laws of the United States, an argument as unfounded as the notion is, that this cause can in any way be carried before the Supreme Court at Washington. To use the Gentleman's own language, "the argument proves too much to be sound." If the Gentoo, if the Turk, if the Jew, by becoming a citizen of the United States, has the unlimited power and right to bring with him his religion and live according to its principles and customs, then, Gentlemen, the Naturalization Laws and the Constitution of the United States authorize patricide, the murder of aged parents, as practised on the banks of the Ganges; Polygamy and the establishment of seraglios, as allowed by the Koran; and all the Jewish laws of retaliation and cruelty which have been so eloquently denounced, an eye for an eye, a tooth for a tooth, &c. Can this be so? Your own common sense will furnish a ready answer.

I ought also to notice the *threat* which was thrown out by the Gentleman, that if you do not put an extinguisher on this prosecution great excitement will prevail. I ask of you on my part not to put an extinguisher upon your own consciences. Be not afraid of any excitement which doing right will raise. Adhere to the excellent motto of the Mechanic Association, to which some of you I know belong, "*Be just and Fear not*." Nothing can be plainer than your duty on this occasion. There is no dispute about the evidence, and the law you ought to presume to be constitutional and valid, until the contrary be proved beyond all reasonable doubt, which in my opinion has not been proved by all the Gentleman's zeal and talents. Probably upon a point involving such important consequences to this community, you will not pretend to be judges better qualified to decide, than those learned men who have devoted a large part of their lives to the study of the law and have been selected by their fellow citizens to make the laws, or those other wise men whom the Supreme Executive have appointed to hold judicial offices on account of their eminent learning and undoubted integrity, all of whom have declared the Statute to be valid, and enforced it as you are now asked to do.—

On this subject nevertheless it seems to me that law-learning and common sense come to the same result; and you may safely rely on your own reason, guided by honesty, and duty and truth, unbiassed by partiality or prejudice, for a proper decision of the question before you. Ask of yourselves what was the object of this law? What mischief the Legislature intended to prevent?—And whether a penal Statute to prevent such mischief unlawfully or unconstitutionally invaded any of the rights of conscience, of free enquiry and decent discussion, the liberty of the press or the principles of toleration? When you consider the matter in this view, I cannot believe you will find any difficulty in ascertaining the right path in which you ought to tread.

You have been plausibly told that you are the people, you come out from the people, you represent the people, who made the Constitution and the laws. I hope the learned gentleman did not mean to suggest, that as such people you had the power to repeal the Constitution and laws. It would be the most monstrous principle ever suggested in a court of justice, that the jury were above the laws, and not bound by them, but had an arbitrary discretion, according to their own ideas of expediency, if they did not like a law, to consider it, and make it a dead letter. Nor for myself can I see any thing in this law against blasphemy which deserves the out-pouring of the vial of wrath which the gentleman has bestowed upon it. If there be any thing wrong in its principle or form, it is very remarkable that it was not discovered before, and that during its constant operation for half a century nobody has petitioned the Legislature for its repeal. It required boldness of no ordinary degree to say to a Jury. you ought to blot this law out of the Statute Book. In my humble judgment, you have no more right to make this law a dead letter, or refuse to enforce it, than you have to repeal or abrogate the law against murder, highway robbery or forgery. No Juror has arbitrary power. No man on the jury has the right to do as he pleases. He is under the law, restrained by the law, governed by the law, directed by the law as much in the jury room as he is out of it, as he is in all other places; perhaps more so there than elsewhere, because in addition to the obligations of duty which every where are in force, he has in the jury room the sanctions of his oath, the appeal to God, superadded to all other motives to do right. If you are not atheists yourselves, if you are christians of any creed that acknowledges the moral attributes of God, and your accountability to him, you will see the path you are to walk in this day lies plainly before you, and that you are to go strait onward, directed by the rules of law and the obligations of conscience, in a cause of righteousness and truth, in which nobody has more interest than you yourselves and your wives, your children, and their children. Who are the parties at issue before you on this solemn occasion? The Commonwealth, all the people of this Commonwealth, on one part, asking for justice against this aged man, on the other part, who it alleges, has done a great mischief in this community, in direct violation

and utter contempt of one of the most salutary laws of the land, and who, if not checked in the mad career of folly and infidelity, will consider your verdict of acquittal, (if such a misfortune should happen) as an unlimited charter and license to him and his associates to multiply and spread their moral poison in unmeasured quantities throughout the land. Are you, gentlemen, ready for this? Do you wish to see the Boston Investigator in every family, such obscenity and impiety in the hands of your wives, your sons and your daughters? If so, shut up your meeting-houses and churches, and go to Julien Hall, where all the mysteries of infidelity will be developed to you: for though it can tolerate no mysteries in religion, yet, if it is not much belied, like the BONA DEA in Rome, it has peculiar mysteries of its own, secrets made known to those who no longer fear God.—If you are ripe for the dispensation of atheism and blasphemy, go at once to the Legislature, it is now in the Capitol on the hill, petition them at once to decree that there is no God, abolish the sacred sanctions of oaths, remove the curbs, the checks and restraints of religious faith, and renew the horrible experiment of republican and atheistical France. But no, gentlemen, I will not pursue this strain any longer before you; I respect your feelings and faith too much. I will not descant at large upon the tremendous and unlimited mischief which the doctrines and essays of this defendant, if there be no law to restrain him, would spread through this happy land. They must and will arise in awful view before you, if you think of them as you ought to think. If, indeed, I should imitate the injudicious and patience-trying example of my learned friend, and choose to illustrate and enforce all my positions for days together by an almost endless variety of quotations, from a cart-load of books, spread in appalling quantities before you, I might fill your minds with horror, disgust and dismay, and waste the important time of the Court by placing before you or reciting numberless tales and true histories of the heart-thrilling and soul-destroying effects of infidelity and irreligion in all ages of the world. Starting from this polluting fountain, I might trace the progress of vice and misery in a thousand narratives, beginning with the first disregard of the religious restraints of pious parents, the first distaste for devotional exercises, and follow the course of the incipient disease, and exhibit the stains and marks of the moral poison as it spread itself over the character and whole system of conduct and behaviour; the rapid steps from vile thoughts to vile actions, and the reaction and influence of a wicked life upon religious opinions; how infidelity towards God leads to infidelity towards man and woman, destroys domestic peace and harmony, breaks up marriages, blunts the natural feelings and affections between parents and children, and dissolves families. I might show the origin of fraud and crime in young men, of lewdness and prostitution in young women: first the wish that God could not see, and then the belief (cherished and fostered by the Julians and other apostates) that God does not see—that there is no God; I might track the

process from the first aberration arising in neglect of prayer and piety, and pursuing the advancing gradations along the wide-spreading road to ruin, follow the youth, freed from the restraints of religion and the curbs of conscience, until we saw the whole moral character lost, and health and decency and respect and honor and industry and innocence ingulphed in the pit of infidelity and crime, and life itself terminated in the almshouse, at the gaol, or on the gallows. Not only days but weeks and months might be spent (if it were necessary for any purpose to occupy a great deal of your time in trying this cause) in reading to you the most glowing and pathetic descriptions of these common effects of living without God in the world ;—I could read as much of the horrors of infidelity as the gentleman did of religious persecution; but it is enough for me to state them. I need only to appeal to you, gentlemen, to call to mind what each of you, within the compass of your own reading and the sphere of your own personal observation, have read of and seen. The fact is universally known and deplored, and needs neither a multitude of books nor any high wrought declamation to prove it.

But bad as the common effects of infidelity are acknowledged by the gentleman himself to be, he affects to dislike the remedy provided in this Statute. He has told you that man ought not to punish insults towards God; and quotes the passage, "Vengeance is mine, saith the Lord." True, "the Lord will repay," though his blind and self-deceived client will not believe a word of it. This argument comes with a bad grace from that quarter. While in the thoughts of his heart he retains the insults of the Most High God, human tribunals touch him not ; it leaves him to that awful vengeance that will overtake him in the Lord's appointed time. But when he tempts others to wickedness, when he commits overt acts of blasphemy, when he openly and invitingly leads the way to the ruin, temporal and eternal, of his fellow mortals, and strikes at the root of the best safeguard and protection of moral conduct, domestic happiness, and public peace and security, he then becomes amenable to human laws and human punishment, as much as the robber and thief of personal property.

Gentlemen, I beg leave to say, in the conclusion of my remarks, that much, a great deal of labor and digression from the merits of this cause would have been saved to the gentleman, to you and to me, if he would have had the kindness and candor to have understood and considered and acknowledged the guarded and carefully worded opinion I expressed in the opening upon the rights of free inquiry and decent discussion, toleration, liberty of the press, religious persecution, &c. He has taken very unnecessary pains to attack and refute a great many opinions never advanced or maintained by me; and much of his triumphant and swelling march over the errors and delusions of mankind in various ages and countries, has been over errors and delusions that no longer exist. I put my expressions on paper, and read them in the hope that the limitations and qualifications by which those expressions were modified, might not be misunderstood or misrepresented.

All that you have heard about the connection of Church and State, and a great many other topics upon which much impassioned eloquence was wasted, too numerous, indeed, for me now even to name them in detail, might have been wholly omitted without any injury to the defence. It is contrary to my habit to make notes either of evidence or arguments, having no leisure therefor in the pressing business of this Court; but on this occasion, that I might be accurately understood by the defendant, his counsel, the Judge and you, and not be misrepresented or mis-reported, I departed from my custom; and now that you may see how unnecessary nine-tenths of what the gentleman has said, upon many of the subjects upon which he dilated so fully, I will appeal to my notes, and read to you again the well guarded and clearly defined principles of civil and religious freedom which I think have not been and cannot be successfully impugned.

[Mr. Parker then read from his manuscript the passages upon these subjects with which he closed his opening speech. See pages of this pamphlet, 17, 18, 19. He then closed as follows.]

And now, gentlemen, I will detain you no longer. I shall attempt no high flown flights, no oratorical displays, in committing this cause to your decision. I perceive you wish them not—need them not—you have had parade speaking to your hearts' content, and so have we all. I have no ambition to entertain or delight you, but rather to urge you to the most serious consideration of your solemn duty. I wish you, after being instructed by the honorable Judge who here presides, to enter calmly, wisely, sedately, conscientiously, lawfully, upon that important business now devolved upon you in the termination of this extraordinarily long trial. I think your duty very far from being a difficult one. The evidence is so clear and conclusive, and the libellous and blasphemous matter so palpable, gross and detestable, that to my view the guilt of the defendant, as charged in this indictment, is as manifest as day light.

Good men and true, stand together. Fear God—do justice—honor the law. So may God help you in the hour of your trial!

---

Mr. Parker was more than two hours addressing the Jury. The next morning Judge Thacher gave them his instructions. His charge was reported in the Boston Daily Advertiser & Patriot of Thursday, 13th February, 1834.

The Verdict of the Jury was—**GUILTY**.—Mr. Kneeland appealed to the Supreme Court, and was there put to the bar again on the 13th of May. His second trial also occupied four days.

IN THE SUPREME JUDICIAL COURT,

ON THE APPEAL, MAY 13, 1834,

BEFORE THE

HON. SAMUEL PUTNAM.

Mr. Parker commenced as follows:—

GENTLEMEN OF THE JURY,

To persons not conversant in judicial proceedings, it may seem unreasonable, that individuals accused of offences *not capital*, should have by law an opportunity to escape by two trials—a double chance for an acquittal—while those who are charged with a capital crime can have but one:—that, where a temporary restraint of personal liberty or a pecuniary penalty marks the utmost bounds of the prescribed punishment, the accused, by complying with certain easy conditions, is entitled to a new and often a far distant trial, while in those cases where life itself is the forfeit of the offence, one verdict is final and conclusive of the prisoner's fate.

Remarkable as these provisions of the law may appear, I beg leave, Gentlemen, to assure you, that no part of the jurisprudence of this Commonwealth has been more rightly, wisely or mercifully considered and arranged than that part which relates to crimes and misdemeanours. It is a branch that comes in contact with all classes of citizens as the offended sufferers, or as offenders, and has in all ages been more often before the Courts than any other; and it is fortunately a portion of the law, whose principles from experience and necessity have become more clear and explicit, and better settled and understood than those of any other branch of jurisprudence.

In the division of judicial labour apportioned by the Legislature among the various Courts of the Commonwealth, very heavy and highly responsible duties are assigned to this Supreme Court; and there are no four men in the nation, of whatever grade or station, who are more incessantly devoted to official occupation and intellectual labour than the Judges of this Court. Indeed it has often been found necessary to lighten the burthens of the Supreme Court as much as possible, the mass of business still pressing on them being enough always to occupy all their time, and notwithstanding their unremitted efforts, keeping many causes in arrear untried. There are many remanents necessarily every term. But the rules of law and evidence relative to crimes, as before observed, being well settled, it has therefore been wisely ordered, that this Court should be released from the trial, in the first instance, of all criminal offences *less than capital*; and that department of judicial business has been intrusted to the inferior tribunals of the State, saving *to the accused* a right of appeal on security given for his appearance and trial in this court. This arrangement, while it removes from this Court a vast quantity of labour, which is well performed elsewhere, secures to every person charged of an important crime, if he puts himself into a condition to claim it after the first conviction, the best trial that can be had in the very highest tribunal of the Commonwealth:—and this is a great privilege, not common elsewhere, and allowed only to *the party accused*, for the Government cannot appeal from a decision in favour of the prisoner in law or fact, however erro-

neous the opinion of the Judge or the verdict of the Jury in the lower tribunal may be. The general maxim is, no man shall be put in jeopardy twice for the same offence: there is under our law a provision in favour of the defendant, but denied to the prosecutor: the party accused may entitle himself to a second trial, and may appeal from the inferior to the supreme tribunal and have his case reviewed, both upon the law and the fact, in the Court of the highest resort. He is not indeed putting himself in jeopardy twice, but taking a new opportunity of getting out of jeopardy. A verdict of acquittal in the court below, however erroneous, is conclusive against the Government, and the prisoner is forthwith discharged.—Not so the Verdict of Guilty: erroneous or correct, he may appeal, and make another effort for acquittal. The law thus tempering justice with mercy, seems anxious to secure a fair and important trial for the accused. Jealous, perhaps, of the natural and indirect influence and power of the State in all cases where it is a party, it extends its protection to the prisoner against all possible injustice which may arise from ignorance, accident, surprize, extraneous influence, prejudice or popular excitement: and for all offences, a person tried and convicted in the lower Court may come here and have his case maturely reviewed. There is no exception but in causes wherein the Municipal Court sits as an appellate Court. But in all those cases where life itself is the forfeit of the crime, the law, still more careful to secure the best mode of trial to the prisoner, and guard him from the irretrievable consequences of an imperfect trial and erroneous result, doth not permit its inferior tribunals to take cognizance of the matter. It requires the Government to bring the accused at first into the highest tribunal, and should it happen that from his poverty, the odiousness, malignity or certainty of his offence or other cause he has no advocate to defend him, the Court by its authority over its officers assigns two counsellors learned in the law to undertake the defence, to make their best efforts to save his life, to see, that, if condemned, it be according to law; and they have no right to refuse to bring their time, learning and talents to the aid of the unfortunate being on trial, in the hour of his peril, although unfeared and however pressed with other duties—and further, in a case involving consequences so serious, the law will not trust the trial to a single Judge, but requires the collected and united wisdom, learning and care of *all* or the major part of its Supreme Judges to see that justice is rightfully and fairly and mercifully administered, where life or death is to be the consequence of the verdict. It is therefore in tender mercy to a prisoner charged with a capital felony, that he is not subjected to a trial in an inferior tribunal, from which he might not be able to make an appeal by complying with its conditions, while all other persons accused must submit to the consequences which may follow an investigation in the lower Courts, and undergo (if found guilty there) the prescribed punishment, unless they come here at their own expense for a review of their cases.

The policy or expediency of granting appeals where only facts are in dispute has often been questioned, and many jurists have proposed that only points of law and decisions thereon should be re-examined in the upper Courts; as many events may happen in the interim (sometimes a full year) between the trials, and much testimony be irrecoverably lost. Witnesses may die, or leave the state, be spirited away or tampered with; documents may be lost, and memory become weak or treacherous, and other disadvantages occur. Nevertheless the Legislature of this Commonwealth, acknowledging the principle that all crimes are mixed questions of law and fact, and that the Jury have a right to decide upon both, have granted the right of appeal to

all persons supposing themselves aggrieved by the proceedings in the inferior Court, and have authorized them under certain conditions to come here and demand a new trial, and that new trial is to have no reference to the former one, and not be prejudiced by its result—and in the case now to be submitted to your consideration, the aged Defendant here on trial, whose reputation and personal liberty is as dear to him perhaps as his life, has not only lawfully but properly availed himself of this legal right. If it had been possible in this County to have presented this cause to a Jury in this Court, who had never heard of the former trial, I would never have mentioned it. Our Courts are by law *open Courts*; and persons, who come here to hear, are apt to go elsewhere and publish our proceedings to gratify the curiosity of those who could not come. Our population covers but a small tract of ground, and what is known to some very soon becomes notorious to all. The daily press, competing with its own numerous rivals, gleans every thing of interest from every department of life to cater for the public appetite for news, and the judicial tribunals are subjected to a large share of its notice, not to say surveillance and espionage, and sometimes to no little of its unbounded abuse. This very cause has been grossly misrepresented in some prints, and the law and the Court misrepresented. Nevertheless, it is, and ever has been, my sincere desire that this as well as all other defendants should have a fair and unprejudiced trial; and therefore, though you must know from many sources that this cause has been once tried, and what the result was, I beg of you not to let that knowledge have any effect on *your* decision of this case. You are sworn to try this issue upon the evidence given **TO YOU**, of the law and the fact, at *this* time and in *this* place. It would be a mockery to give a man an appeal, and let the Jury in the appellate Court be governed or even influenced by the verdict in the Court below. What other men thought under certain circumstances of evidence and certain directions of a Judge not now presiding, is no concern of yours. You are to be directed by the light of your own minds and the dictates of your own consciences, after hearing the evidence, the arguments of counsel, and the charge of the Court. The former verdict is null and void by the appeal, and you are to try this cause in the same manner as if the Indictment was this morning fresh from the Grand Jury's room, and never before been heard of, or seen. With this view of your obligations both to the Commonwealth and to the defendant, I now invite your attentive consideration to what in the discharge of my duty I shall deem it proper say in the opening of this cause to you, now sworn on your part to do justice between the Commonwealth and the defendant.

My learned friend, who is to conduct the defence, dislikes the practice of the English bar (as he does almost every thing else that is English); and he thought that on a former occasion I had adopted their custom of arguing a cause before introducing the testimony. It seemed to me that his usual candour had forsaken him when he made the remark; but that he may not have even this imaginary cause to complain of on the present occasion, I shall confine myself in this preliminary address to you within the strictest rules of opening Counsel; and if I should be a little longer than he expects, I hope he will remember that my *patience* once lasted for three *days*, and he ought to allow me at least as many *half-hours*, if his forbearance can endure me for that short period;—not, Gentlemen, that it is my intention (if it was in my power) to delay you or the honourable Court by any useless display of learning or rhetoric. I have neither ambition, leisure, nor love for parade of any sort, and least of all for parade speeches, which are great evils on all occasions. I look upon the business we are engaged

in, as a solemn, important, grave and responsible occupation, one in which self and display, ambition and fame should be forgotten, and law and justice, truth and duty alone be regarded. We are assembled here this day to do this business, (each of us the portion of it assigned to us respectively by the law) fairly, rightfully, conscientiously, with a due respect to the majesty of the public justice on the one hand, and with a candid and careful regard to the rights of the prisoner on the other.

The defendant stands charged by the Grand Inquest of the crime of Blasphemy. His offence is "*fully, and plainly, substantially, and formally described to him,*" in the Indictment, as the twelfth article in the Bill of Rights in the Constitution requires. To this charge he has pleaded that he is not guilty thereof, and that is the question you are to try. I have already said to you, that all questions of crimes are mixed questions of law and fact, and that Jurors are to decide upon both.

In opening this case, therefore, I shall *first* consider the nature of the offence—the law in relation to it,—its constitutionality, reasonableness, binding force—and the necessity and duty of enforcing it in the present occasion. I will afterwards briefly narrate to you the facts I shall endeavour to prove, and then will introduce the evidence.

It may be useful, before proceeding farther, to get accurate ideas of some words used in the Indictment and in the Statute. What is *Blasphemy*? What is the meaning of the verb *to blaspheme*?—Let us consult standard authorities.

Dr. Johnson, the great English Lexicographer says, *Blasphemy* is an offering of some indignity unto God himself. *To blaspheme*—to speak in terms of impious irreverence of God. *A Blasphemer*—a wretch that speaks of God in impious and irreverent terms.

Dr. Webster, the standard American Lexicographer, says *To blaspheme* is to utter blasphemy, to speak of the Supreme Being in terms of impious irreverence, to speak evil of, to utter abuse or calumny of. —*Blasphemy* is an indignity offered to God by words or writing!—that which derogates from the prerogatives of God.

In the law books, *\*To blaspheme*, from two Greek words, signifies to hurt, injure or wound the fame, character, good opinion, reputation. †*Blasphemy* consists in the denial of the being, attributes or nature of, or uttering impious or profane things against God, or the authority of the holy Scriptures. It is committed by uttering such things in a scoffing and railing manner.

I hope, Gentlemen, that standing here, in a christian country, representing the Commonwealth of Massachusetts, (whose history, constitution and general laws must be taken notice of and regarded by all Courts and Juries,) speaking to Christian men, who when impannelled to discharge the solemn duties you are now to perform, heard pronounced (by positive requirement of law) an invocation of the favour of GOD towards you, so as you should give a true verdict in this trial conscientiously and rightly; I hope at such a time, and in such a place, and in executing such official acts, it will not be expected of me to offer any proof of the existence or attributes of the Deity, although those proofs crowd on the mind in great numbers and force. I cannot forget that we are a Christian community; that God is acknowledged and worshipped in some form in every nation on this earth; and especially that the people, the sovereign authority in this Common-

---

\* In Williams' Trial by his Counsel—before Lord Kenyon in 1797. 26 Howell's State Trials, p. 654.

† Hume on Crimes, vol 2, chap. 518.

wealth, and the great and the good, the wise and the talented men representing them in the Convention and Legislature, have proclaimed in their Constitution and Laws, their belief in the being of a God, the great Creator and Preserver of the Universe, and in his superintending providence over States and empires ;—have enjoined the duty of worshipping him as such, and interwoven the essential principles of the Christian Religion into the jurisprudence, the fibres and nerves, the flesh and blood and stamina of the body politic.—Nor do I deem it incumbent on me here to discuss and demonstrate the marvellous excellency and truth of the Holy Scriptures, which have been proved for eighteen centuries by the soundest arguments and most convincing evidence to be worthy of all admiration and reverence ; the inestimable gift of God to man, the invaluable light and guide to human and eternal happiness. Though upon these subjects the most satisfactory proofs could be laid before you, proofs more in number, greater in power, easier in comprehension, more admirable in extent, efficacy and success, than those of any other science ; it is my duty rather to claim your respect and attention to them at *this* time and on *this* occasion from their *authority as established by the laws* of the land we live in, which we are here assembled to enforce, and not to divert your minds with an elaborate demonstration and display of their unbounded merits. There are many passages in the Constitution and many Statutes among the laws of this Commonwealth which assume the Christian religion to be of divine origin, recognize it, and are grounded upon it, which may thus be considered as established by the highest authority in the State. In the progress of this trial they will pass in review before you. But it will be proper for me in the first place, to read to you the Statute Law on which this Indictment is founded. It is the Act of July 3, 1782, entitled An Act against Blasphemy.

(The Statute here was read.)

I take occasion here to say, that this Statute created no *new* offence. For ages before it passed, blasphemy was a crime at common law, and for a long time also by Statute laws in the Colony and Province of Massachusetts Bay, before the adoption of the Constitution of the Commonwealth. It is my duty to state likewise to you, that, under this Indictment, if the Statute of 1782, could from any cause be considered inoperative, still, if the facts set forth are proved to your satisfaction, the defendant can and ought to be convicted as for an offence at common law. Therefore in considering the law in relation to this offence, both the Statute law and the common law are to be placed before you ; and if it be made to appear by the evidence that the party now on trial is guilty of the acts alleged in the Indictment against him, you will then consider whether those acts do not constitute the crime of blasphemy, either by the Statute, or by the common law, and if by either, then he is necessarily to be pronounced Guilty by your Verdict.

What the general meaning of the word Blasphemy is, I have already shown to you ; but it is not necessary to depend upon dictionaries and lexicographers for what under the Statute constitutes the crime of which the defendant is accused, because the Statute itself undertakes to define the several acts which are to be considered blasphemous. There is but *one* crime stated, one *corpus delicti* ; but *several ways* are enumerated by which it may be committed. The law is predicated upon the existence of God, Jesus Christ, and the truth of the Holy Scriptures ; and denying or contumeliously reproaching them or either of them is declared to be blaspheming God's holy name. There are at least five ways specially mentioned in the Statute, all, and each one of which is, by the express language of the Statute,

declared to be blasphemy. Those ways are—denying, or contumeliously reproaching God—denying his creation, government, or final judging of the world—contumeliously reproaching Jesus Christ—contumeliously reproaching the Holy Ghost—reproaching the Holy Scriptures, or exposing them, or any part of them to contempt and ridicule. In this Statute then we have a legislative definition of the crime of blasphemy contained and illustrated in a description of the various acts which constitute it. There can be no misunderstanding or misconstruction of it. It is plain and intelligible to the understanding of every citizen of common sense within the State. It is a law, made and approved as all the other laws of the Commonwealth have been; it has never been expressly repealed or superseded, nor by implication. It has been republished in every edition of the Statute laws, and by Commissioners appointed by the Legislature to cause accurate editions of the standing laws to be re-printed, the present Chief Justice, and a very learned and experienced jurist of a neighboring County, Theron Metcalf, Esq. of Dedham, being two of the last Editors.

One would suppose nothing could be clearer or less capable of dispute in a community governed by laws, than the meaning and obligatory force of this Statute; but past events have informed me that no assertions are too bold to be made, no positions too weak to be taken, in support of a desperate defence in a plain cause. It appeared to me, that that courage was bold in the superlative degree, which could coolly and gravely assert in a Court of Justice in *this* land and at *this* period of our history, that the Statute in question should be considered by Jurors as a *dead letter*, and that a Jury could obliterate it from the Statute Book. That most extraordinary and bold assertion was founded upon the groundless hypothesis that the law was *unconstitutional*. It has of late years been much the fashion among persons charged with offences to question the constitutionality of Statute laws which have been violated; and whenever that objection is made, Courts and Juries are bound to examine and consider it, however groundless the assertion may be. I shall not in this opening address go into an elaborate argument upon this point, but content myself with stating a few positions and give the defendant's Counsel and the Court a reference to the passages in the Constitution, which in the close I shall read as proving beyond a doubt that this Statute is not only not unconstitutional, but consistent with, and in pursuance of its provisions and principles.

By the instrument itself, in unequivocal language, the Christian religion is made part and parcel of the Constitution.

Without belief in the Christian religion, this Commonwealth could have had no Governor, Council, Senators or Representatives, no government prior to the year 1820, and no lawful convention in that year to amend the Constitution.

(In the Preamble.)—The Constitution proclaims the existence and providence of God.

(2d Art. in Bill Rights.)—It declares it to be the duty of all men to worship God.

(3d Article.)—It recognizes *Christians* of every denomination and places them under the protection of the law.

(18th Article.)—It requires legislators to regard *piety* in making the laws, which is a decided, direct and conclusive proof of the constitutionality of this Statute, which is made for the very preservation of piety.

(The Chapter on Oaths)—Makes a direct appeal to the providence, judgment and favour of God towards those who observe the obligations of their oaths.

(Chap. 2, Sect. 1, Art. 2—chap. 2, Sect. 2, Art. 1—chap. 6, Art. 1.)—No persons but professed Christians, (those who declared their belief in the religion taught by Jesus Christ and his disciples) were eligible to the office of Governor, Lieutenant Governor, Counsellor, Senator, or Representative, thus incorporating essentially faith in the Christian religion into the Constitution, by requiring it as an indispensable qualification for those high officers. The whole legislative body—the makers of all the laws—both branches of the Executive, must have this faith, and profess it most solemnly and openly; and without it were incapable of a single lawful official act.

The original Constitution in some of these respects was altered in the year 1820, but the convention, which made the alteration, could not have been convened but by the preceding Legislature which was necessarily composed of Christians. Without Christians, there could not have been any such previous legislature, and of course without Christians there could have been no convention to amend the Constitution in 1820.\* What still remains unaltered and unchanged, in the amended Constitution and Laws, continues to be based upon the essential principles of christianity, and are in unison with them.

If these plain and positive portions of the Constitution do not contain abundant proof enough that a law against blaspheming God's holy name is in conformity to its spirit and principles, and not repugnant to them, there is one other part of the Constitution, which establishes the common law prohibition of blasphemy and the previous Colony and Province Statute laws against that crime. I refer to the sixth chapter, the chapter on Oaths, &c., Article sixth, "All the laws which have been adopted, used, and approved in the Province, Colony or State of Massachusetts, shall still remain and be in force until altered by the Legislature."

Now if I can satisfy you that the common law used before the adoption of the Constitution prohibited blasphemy, and was in force, and if also, I can show you Colonial and Provincial Statute laws against Blasphemy in force before the adoption of the Constitution, then I shall thereby prove to you that laws against blasphemy were in their essence and principle constitutional, and were constitutionally in express language continued and prolonged in force until the Legislature interfered; and further, if when the Legislature did interfere, it re-enacted the same laws with some change only as to the mode of punishment, but none in relation to the principle, nature, description, or wickedness of the crime, then it will follow as an unavoidable inference, that such re-enactment is in perfect conformity to the Constitution, and cannot be said with any truth to be unconstitutional.

I am prepared to satisfy you on both these points, that the common law prohibited blasphemy, and that Colony and Province laws were enacted against that crime; but shall now only refer to the authorities and Statutes on which I shall rely and comment in the close, for the establishing of both positions.

In the time of the Colony† 1646, there was a Statute against blasphemy. About 50 years afterwards in the year 1697, a similar act in principle was passed against Atheism and Blasphemy.‡ These Statutes remained in force until the adoption of the Constitution, and were continued in force by its express language.

In several of the earliest Sessions of the Legislature after the new Constitution went into operation, many of the members of the con-

\* See chap. 5, Art. 10, providing for calling a convention.

† Colony Laws, chap. 18, pp. 58 and 61.

‡ Province Laws, chap. 47, p. 302.

vention who made that Instrument and knew its meaning, and knew their own meaning when they drafted and debated and adopted it, were elected to and accepted offices in the Executive department, and in the Senate and House of Representatives, and were in fact the very makers of the present Statute now in question. It is inconceivable and in the highest degree improbable, that they who in one year made the Constitution, in the next should pass a law repugnant to it, or unconstitutional. A cotemporaneous exposition (contemporanea expositio est fortissima in lege,) and construction of a Statute are said to be the best, as most likely to be the meaning of the lawgiver; so it must also be as to the construction of the Constitution; and the very early date of this law is therefore one of the best proofs of its constitutionality. It may be added also, that there have been several prosecutions and convictions on this Statute in different parts of the Commonwealth before the Supreme Court, and thus it has had already Judicial decisions by the highest tribunal, that it is constitutional.—A case in the County of Lincoln, is referred to in 6th Dane's Abridgment, p. 667, in the year 1795, when a full Court attended Jury trials, and decided the law as it came up, and I have been informed of a conviction before the Supreme Court, also, at Taunton. I have heard of other cases under this Statute, in other counties.

Permit me to present another argument for the consideration of the defendant's Counsel, when he addresses you. It is now upwards of fifty years since this statute was passed, and its penalties have ever been enforced where occasion has required. If there have not been many convictions under it, it is not owing to the invalidity of the law, but to the good morals and manners and exemplary piety of the people. The offence, if as common as larceny, would have been as often prosecuted—but such is its enormity, it has been less frequent than murder. Nevertheless there have been prosecutions enough to call the attention of the public to the statute; and yet nobody out of the Legislature has ever represented it as unconstitutional and asked for its repeal, and nobody within the Legislature, fond as they are of changing, amending, altering, codifying and repealing laws, has ever thought it ought to be repealed for this or any other cause. Surely some of those eminent lawyers who from time to time have revised and published the statutes under the order of the Legislature, some of the lawyers and other intelligent members of the Legislature, would not have overlooked this objection to this particular statute, if it existed, and would have had patriotism, justice and honor enough to have recommended its repeal, if there had been any reason to doubt its constitutionality. It infringes upon no part of the constitution; it is consistent with all its provisions; it is in unison with former laws on like subjects, and the question of its constitutionality seems to me to proceed from the forlorn hope of the defence in the necessary struggle for a safe retreat from this contest.

I will here also give references to subsequent statutes in relation to religion, the very enactment of which adds further weight to the arguments in favour of the constitutionality of this. I shall at this time make no comment on them. They may be considered as made in *pari materia*, recognizing the Christian Religion, providing for its support, and enforcing its principles.

3 Acts concerning the observance of the Lord's day. *What Lord?* I answer that Being adored by christians, the constitution and the whole system of our jurisprudence recognizing and referring to the Christian Religion. These 3 acts are Statute of 1791, chap. 58—1796 chap. 89—1815, chap. 135.—Also the several acts for the public worship of God. *What God?* The God of christians. These statutes

are those of 1785, chap. 50, Sec. 15.—1786, chap. 10.—1797, chap. 23.—1799, chap. 87. Also, the Act in relation to profane cursing and swearing, 1798, chap. 33. Its preamble speaks of blasphemy as a crime. The volumes of Massachusetts Reports of Judicial decisions of this Court are full of adjudications upon these Statutes, and the constitutionality of them seems to stand upon impregnable foundations. See especially Chief Justice Parsons' opinion in the case of *Barnes vs. Falmouth*, 6 Mass. Reports, p. 401, and Chief Justice Parker's in *Adams vs. Howe*, 14 Mass. Rep. p. 345.

I might further state the Constitution itself was re-examined and considered in 1820, by men who have often since been in the Legislature, and many religious parts of it were discussed, but not the slightest suggestion that this Statute was unconstitutional or ought to be repealed, was ever pretended. Besides, the State of Maine since its separation, and since the amendment of our Constitution has re-enacted this very law. Maine Laws, chap. 8.

This is all that is proper for me to say in the opening in relation to the Statute, and its constitutionality.

I proceed now to state to you the principle of the common law in relation to Blasphemy, having already told you, that if from any cause the Statute of 1782, should be deemed in-operative, still the defendant may be convicted under this Indictment of an offence at common law. The principle of that law is this, that the law will restrain and punish all open and public attacks upon religion—upon the authority of the Scriptures, and upon the founder of Christianity, *because the belief in religion so construed, constitutes the only binding obligation among men, and its denial tends to the subversion of all law and order in society.* 3. Merrivale, p. 390.

I am prepared to prove this to be the principle of the common law by upwards of thirty quotations and authorities. I shall claim the right and privilege in some part of this trial to read these passages and citations in the hearing of the Court and Jury, because in the language of Lord Chief Justice Hale, "the common law is not the product of the\* wisdom of some one man, or society of men, in any one age; but the wisdom, counsel, experience, and observation of many ages of wise and observing men;"—and in the language of Chancellor Kent,† "the best evidence of the common law is to be found in the decisions of the Courts of Justice, contained in the numerous volumes of reports which crowd the lawyer's library; and in the treatises and digests of learned men, which have been multiplying from the earliest periods of the English history down to the present times."

I shall leave it to the option of the Gentleman engaged in the defence to have them read now in his hearing, or to accept from me a list of them which I have made out for him; and I wish here to give him notice, that upon this point, if the course of the defence makes it necessary, I intend to go much into detail, with a view in the first place to establish the general position before stated, and secondly to show both by common sense and judicial decisions the fallacy and sophistry of the reasoning of Mr. Jefferson in his letter to Major Cartwright, of which the Gentleman laid so much stress in his former argument; a document which before the former trial I had never seen, and during that trial had no opportunity to consider and refute. If that letter under the sanction of his name, or, if without his name, the flippant and flimsy argument it seems to contain, should be used on this occasion in the defence, I think I can safely promise that I will prove to you it was wholly unworthy of its author, and undeserving

\* Quoted in 1. Kent's Comm. p. 439.

† 1. Kent's Comm. p. 440.

the eulogium it has received ; and that if Mr. Jefferson had been no better a statesman than he was a lawyer as manifested in that publication, his fame would never have extended beyond his own parish, nor stood very high there.

The authorities by which it appears that blasphemy was an offence at common law are these, I will endeavour to arrange them chronologically.

I begin with Taylor's case—reported in Ventris' Reports and Keeble's Reports. It was in the Court of King's Bench in the year 1674.

The authorities relied upon are these, viz:—

1. Ventris' p. 293.—3d Keeble, pp. 607 and 621.—2 Strange, p. 789.—1 Barnardiston's Reports, 24.—17 Howell State Trials, p. 154.—In the year 1727, Rex vs. Curl. "Religion is part of the common law. Whatever is against religion is against the common law."

2 Strange, p. 834, and Fitzgibbon, p. 64. In the next year 1728, Rex vs. Woolston.

In Ayliffe's Parergon published in the year 1726, is this passage, "Blasphemous words are a crime against the Laws, State, and Government of the realm, and against Christianity itself, which makes one part of the Law of England, and therefore punishable at common law."

11 Mod. p. 142,—6 of Anne, A. D. 1706. The Queen vs. Reed.—A crime that shakes religion is indictable.

1 Wm. Black. Reports, p. 395.—In the year 1762. Rex vs. Annet. Harrison vs. Evans, 1767. 2 Burn's Ecc. Law, p. 218. 3 Brown's Cases Part. p. 465.—In the very eloquent opinion of Lord Mansfield, in House of Lords in this case, reported 2 Burns' Eccl. Law, p. 218, he says—for Atheism, blasphemy and reviling the Christian religion, there have been instances of persons prosecuted and punished upon the common law.

25 Howell's State Trials, p. 653.—In 1797. The King vs. Thomas Williams. Before Lord Kenyon.

31 Howell's State Trials, p. 927.—In 1812, Daniel Isaac Eaton's case. Paine's Book also, before Lord Ellenboro.

3 Barn. and Alderson, p. 161.—In 1819, the King vs. Carlile. What Best, Justice says.

1 Barnwell and Creswell, p. 26.—In 1822, the King vs. Waddington. What Abbot and Best say.

3d Merrivale, p. 407.—In the Attorney-General vs. Pearson.

In America.—6 Dane, p. 667.—Blasphemy is punishable at common law.

8 Johnson's Reports, p. 290, People vs. Ruggles in 1811. Read Chancellor Kent's opinion.—11 Sergeant Rawle, p. 394, Updegraph vs. Commonwealth.—6 Mass. Reports, p. 401, Barnes vs. Falmouth, by Chief Justice Parsons. 14 Mass. Reports, pp. 345, 347, Adams vs. Howe, Chief Justice Parker.—5 Mason's Reports, p. 18, Wakefield vs. Ross.

Upon the subject of Blasphemy, the text books recognize the principles of law which are contained in these adjudged cases.

1 Hawkins' chap. 5, p. 12.—2 Burns' Eccl. Law, by Lord Mansfield, p. 95.—Tremaines' P. C. pp. 43, 45, 225, 226.—4 Blackstone, p. 59.—1 East. pp. 3, 5.—Eunomus' 3d Dialogue, 112.—2 Woodeson, p. 512.—Christianity as well as the law of nature, have ever been considered as part of the common law.

2 Chitty Crown Law, 2 vol. p. 13.—1 Russell on Crimes, pp. 302, 312.

4 Bacon's Abridgment, new Edition, p. 183.—"Where errors are of such a nature as subvert all religion or morality, which are the

foundations of government, they are punishable by the temporal Judges with fine and imprisonment and also such corporal infamous punishment as to the Court in discretion shall seem meet according to the heinousness of the crime, *ne quid detrimenti respublica caperet.*"

4 Petersdorf's Abridgement, p. 396, in note.—Blasphemy is defined as used at common law.

2 Dane's Abridgt. p. 337, chap. 48, Sect. 17.—Man is born a religious as well as a social being, and religion was made a part of the Constitution to co-operate with human institutions, and that religion was protestant christianity. 6th vol. pp. 666, 667.—Blasphemy is punishable at common law. Chap. 198, Art. 2,—chap. 198, Art. 8, Sect. 17, p. 575, to same purport.

7 Dane's Abridgement, chap. 219, Art. 2, Sect. 19, p. 286.—An information lies by the common law for every crime which tends to the subversion of the State as for blasphemous words—"for religion is the cement of society."

2d vol. p. 348—also, whole chap. 48.—The religious establishment of England was adopted by the Colony of Virginia with the common law on the subject as far as applicable. Cites 9 of Cranch, 43, Terret vs. Taylor.

2 Dane's Abridgement.—The whole chap. 48, relates to support of Ministers and Religion, collects Statutes and adjudged cases.

Starkie on Slander, p. 487.—It is the close connection between moral obligation and opinions on religious and theological topics, which, as it were, invests the temporal Courts with jurisdiction over the latter, which are apparently of mere spiritual concern. The importance of this relation is strongly illustrated in the instance of judicial oaths. The foundation of these is a belief in a superintending Deity, who watches over the affairs of men, and who will in a future state administer rewards and punishments with reference to their conduct here. To remove therefore so solemn and weighty an obligation, would be to overthrow, or at least to weaken, that confidence in human veracity so necessary for the purposes of society, without which no question of property could be decided, and no criminal brought to justice.

And in page 493, Mr. Starkie, after reviewing the decided cases, says, "It appears therefore to have been long settled, that blasphemy against the Deity in general, or an attack against 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."

Holt, pp. 60, 64.—The whole chapter of Holt, p. 64, to be read.

It would seem then very clear from these numerous cases, that in England Blasphemy is, and has for centuries been, an offence at common law. It follows that it is a common law offence here also, for it was solemnly declared by this Court many years ago, that "our ancestors, when they came to this new world claimed the common law as their birth-right, and brought it with them, except such parts as were judged inapplicable to their new state and condition." From their history, manners, habits, opinions, situation, condition, and statutes, it is apparent that they approved, adopted, and enforced the principles of the English common law respecting this crime. Commonwealth vs. Knowlton, 2 Mass. Reports, p. 534. See also, 1. Kent's Commentaries, pp. 316, 321, 421, 455.

I shall now consider that I have gone far enough in the opening of this case, to convince you of the reasonableness and binding force of the common law against this offence, and the constitutionality of the Statute law, against Blasphemy. I have distinctly stated my views

and the authorities upon which I rely. It was proper to go thus far, not merely for your information, but to apprise the learned Counsel of the defendant of my positions and the cases which support them, that he may answer and refute them if he can. I had proposed also in this opening of the case, to have submitted some reasons shewing the duty of suppressing blasphemy at the present time; but I will forbear upon this topic until the close of the case.

The testimony in the present case will give you no difficulty. I am required by law only to prove that the defendant published the blasphemous Libel. It will scarcely be denied. The defendant is the Editor of a paper called Boston Investigator. I shall produce one Number of that Publication containing the blasphemous passages set out in this Indictment. I shall prove to you it was published by him. I am aware something will be said about his being absent from the city when it was printed and published. That makes no difference in his liability. It is the opinion of the most celebrated Judges of the law, Lord Chief Justice Hale, Mr. Justice Powell, Mr. Justice Foster, and Lord Kenyon that the Proprietor and Editor of a Newspaper is criminally answerable for a Libel inserted *without* his knowledge. *Rex vs. Walter*, 3d Epinasse Reports, p. 21. *Holt's Law of Libel* p. 47. 7 *Dane's Abridgement*, p. 56. See *Loft's Reports*, p. 554, 780.

I need not here explain the reasons. They will be found very applicable to this case. Nor is it any excuse or justification to the defendant, if it appear that some of this indecent blasphemy was copied from some other paper. The re-publication of a Libel is as great an offence and produces as much evil, as its first promulgation, and often more. No authorities are necessary to prove this doctrine, because I am sure the learned Gentleman will not deny it. When therefore, I shall have proved to you that the defendant is the printer and publisher of the blasphemous Libels set forth in this Indictment, my duty in opening this cause will have been performed. There are many things I shall have to say to you in the close in commenting on the case and upon the nature of the defence which would be here out of place. There have been many misrepresentations of the nature and motives of this prosecution; much idle complaint of religious persecution, of infringing the liberty of the press, of restricting free enquiry, of the inexpediency of the Indictment, &c. I will speak to you upon these topics in a more appropriate place, and proceed now to the testimony.

[*Here the testimony was introduced.*]

This paper being now proved I put it in the case, and hope the learned Counsel of the defendant will again do me the favour of dispensing with my reading it to you. You will have it in your room, and can there compare it with the Indictment, and the law. I shall not now detain you with a commentary upon its meaning. Much ingenuity has been applied to explain away its offensive blasphemy, and may be resorted to again for the like purpose. When it is proper for me to discuss the meaning and import of the publication and language of the defendant, more at large, I hope to convince you that the Grand Jury have not mistaken the meaning of the blasphemous passages, nor ascribed more wickedness to the publication than it evidently contains. The law and the fact being now before you, and both being clear, and indicating the defendant's guilt, I shall expect a Verdict against him, if you are true to your duty, and regard conscientiously that oath that you have taken to give a Verdict according to evidence.

MR. DUNLAP commenced the defence on Tuesday, the 13th May at eleven o'clock, and finished it at two on Wednesday the 14th, when the Court adjourned to next day, he having on this trial read his former argument to the Jury, from printed sheets since published.

---

MR. PARKER in the close addressed the Jury from 9 to 3 o'clock on Thursday the 15th May, as follows:—

GENTLEMEN OF THE JURY,

If the result of this trial depended upon the much speaking, the longest argument, or the loudest declamation, I should despair of any success in it; or if personal friendship and intimacy with the defendant or his bail, and political and personal associations with the Counsel in the cause should influence the minds of any of you in the discharge of the high and responsible duty now imposed upon you by law, and undertaken solemnly in the sight of God and this Court to be discharged *conscientiously*, I should also have some distrust, that the rights of the Commonwealth might be overlooked through the operation of personal or political feelings. But if your Verdict is grounded upon the law and testimony of the case, if you give a Verdict according to evidence, as you have sworn to do, I look to your decision of this cause with the utmost confidence in behalf of the Government. But for some apprehensions arising from what I have heard out of Court since you were empannelled, and which I hope may be unfounded, I think it probable, Gentlemen, I might forbear to use my privilege of addressing you at this time without any danger to a result in favour of the Commonwealth. There seems to me but little necessity, so far as respects the rightful decision of the case, to make any reply to the very elaborate, voluble, discursive, and eloquent oration of my learned brother, who has misapplied so much time and talent, so much reading and rhetoric, so much fancy and feeling, in attempting the almost hopeless defence of his delinquent client. I am nevertheless induced by several considerations to bespeak your indulgence for a time that I may not appear to neglect my duty in a prosecution, of which I am not the author, and which has excited so much attention, and that I may have an opportunity of saying to you some things which I excluded from my opening address, that they might be introduced into this more appropriate part of the cause. But you need not fear, Gentlemen, that I am going to ramble all the world over in the track of the defendant's counsel, though nothing would be easier than to follow him, and point out the thousand fallacies of his arguments, and the numerous errors of his statements. The real as well as the avowed object of a judi-

cial trial is to discover truth, and, when that is found, to apply the rules of law according to that truth. To attain this desirable object, there is usually a division of labour ; the law assigns some portion of it to the Counsel of the parties, some to Witnesses, some to the Judge, who holds his high station to regulate the proceedings of justice and enlighten the Jurors ; and a very important part to the Jury themselves, whose especial duty it is, fairly, faithfully, lawfully and conscientiously, without fear, favour, partiality or affection, to look for, to discover, and firmly and sincerely to proclaim in open Court the truth when they have found it. We at the bar are bound to aid and assist, not mislead or confound you in your researches and investigations ; the Judge is to afford you the benefit of his education, learning, integrity and experience, and then your duty is to be performed ; you are fairly to examine the case, and after considering the law and the testimony, you are honestly to declare before God and this assembly what are the dictates of your conscience, guided by the best and fairest exercise of your honest judgment and intellectual faculties, and what the truth is in relation to the charge preferred against the defendant, whether he be Guilty or Not Guilty as alleged in this Indictment. It must therefore be clear to your minds for what purpose you are here before us this day ; why you have been selected by lot according to law and placed in those seats ; you cannot mistake that you have been duly impannelled to act as JURORS in a Court of law, and sworn to give a true Verdict according to evidence, and that you are here in no other capacity and for no other purpose. You are not at liberty to change your office of Jurors into that of Legislators. The Judiciary and Legislative departments are designedly separated and kept apart by the Constitution of the State. This Hall, assigned and devoted to the trial of causes in the Judicial Courts, is not the place to make or repeal laws, but to administer and enforce them. It is no part of a Juror's duty to debate and decide whether a Statute duly enacted is wise, or impolitic, expedient, or the reverse. The business of passing, altering and repealing the laws is placed in other hands, and you will not usurp a power that constitutionally belongs to other men, certainly not to you assembled at this time, in this place, and on this occasion. I cannot think it necessary to say more to guard you against assuming Legislative powers, which the supreme law of the land has confided to Governors, Senators and Representatives chosen and qualified according to the Constitution, the only functionaries within the Commonwealth, who can make, alter or annul a law. Arbitrary and rash assumptions and exercise of illegal powers by any body of men, become absolute tyranny and the height of political wickedness. If Jurors put themselves above the laws and beyond their controul, the trial by Jury, now one of our most invaluable rights under, and in obedience to, the laws, would become one of the greatest evils ever inflicted on a free people. We should live under a

government of men, not of laws ; and infinite mischief and injustice would ensue. No body could be sure of getting their rights ; there is not a law in the Statute Book that some Jurors might not wish repealed. My friend on the other side, in his superabundant zeal for his client, has I fear been unguarded on this subject ; and in his cooler moments I doubt not would be the earliest to disclaim some of the sentiments, which in the heat of his eloquence his mind has thrown out to influence you in this cause. I feel confident, that when enforcing the laws of the United States in those Courts of the nation where it is his special duty to bring offenders to justice, and where he is now about to go to discharge that duty, he would most earnestly and vehemently protest against a panel of Jurors usurping to themselves the exclusive power of Congress, the power to make, amend, alter, or abrogate the laws of the Union.

It is my wish, Gentlemen, also to disabuse your minds and free them from some other erroneous impressions, which the defendant's Counsel may have produced by the splendour of his declamation, and the heightened and characteristic boldness of his assertions. Upon some subjects and some men he has lavished in wanton profusion superfluous though just encomiums ; and upon others- has wasted much excellent indignation. I perhaps differ from him concerning some things only in the extravagant height to which his mind in its fever heat occasionally elevates and throws off his thoughts. But there are other topics in discouraging upon which I think his zeal for his client's acquittal has led him astray, and upon some he became *radically* wrong ; and I will ask your indulgence for a few moments, lest, charmed by the music of his oratory and the flowers of his fancy, you may perchance follow him into the path of delusion, where you will soon be surrounded and ensnared by the thorns and brambles which spring up in countless numbers in that dangerous road.

I begin with a very important subject, upon which much error already prevails, and perhaps will be extended by my learned friend's declamation in this trial. In this country, under our free political institutions, there is nothing more valuable than the freedom of the press. It often guides public opinion, which now is the most powerful engine for good or for evil on earth. The press checks, controuls, and governs the mighty men of the nations, and preserves the rights and freedom of mankind. It leads the way to reformation, to scientific and practical improvement, to good manners and morals, and to all the blessings of social life. Valuable as the press is, there are few subjects less understood than what constitutes the liberty of the press. In some nations there have been, and in others there still are, established censors of the press, and nothing can be printed without the previous supervision and permission of the Government officers. In such countries, there is no freedom of the press ; it is curbed, restrained, controuled, overawed, and kept in a state of slavish subserviency

to the party in power. By the Constitution of Massachusetts, it is declared, that "the liberty of the press is essential to the security of freedom in a State; it ought not therefore to be restrained in this Commonwealth." It is obvious that this language refers to freedom of discussion in political matters. There is a difficulty in marking with accurate precision the boundary line between the use and the abuse of the press, between its lawful liberty and its illegal licentiousness. I think however, no sensible Jurors will yield to the latitudinarian sentiments advocated in radical quarters, that the Constitution by insuring the liberty of the press allows malicious and scandalous Libels and every species of obscene, blasphemous and infamous publications, and that there is no real liberty of the press unless every body may publish every thing about any body and any thing, without regarding the quality or tendency of the publication. As well might it be said, that because the Constitution allows the people to keep fire arms and military weapons, therefore, no restraint should be put on their use, and swords, pistols, and muskets may be constitutionally used for murder, assassination, and highway robbery. Is the liberty of the press any thing different from the liberty of the bludgeon, the dagger, the sword? The liberty of using a thing lawfully, confers no privilege of doing an unlawful act with it. If a murderer, whose guilt was fully proved before a Jury, should demand an acquittal upon the ground that the law against murder was unconstitutional, inasmuch as the Constitution allowed him the use of fire arms, and he did no more than shoot a man by using his pistol, why would not that be as good an argument for him, as the argument for a blasphemer is good for him, that the Constitution says the liberty of the press ought not to be restrained, therefore, the law prohibiting printed blasphemy is unconstitutional? Just before the adoption of the Constitution of this State, Lord Mansfield officially said in an English Court, "the liberty of the press consists in printing without any previous licence, *subject to the consequence of law*;—the licentiousness of the press is Pandora's box, the source of every evil." This was the opinion also of Lord Camden.

Mr. Holt in his excellent treatise on the law of Libel has the following passages, (page 60.) "As no one can have a right to speak what is contrary to morals, to religion, or to the good of others; as no one can have a general and loose right of accusation, trial, and judgment; and as even natural rights and the exercise of natural powers are necessarily limited when the purposes of society require it; so the natural power of speaking, and the consequential power of publishing, are always limited by moral duties, and in many cases are frequently still further restricted for social ends and consequences. The liberty of the press, restricted as it may be by the English law of Libel, will be found wide enough for the exercise of every right and duty. It prohibits nothing but injury; it confines from mischief the

employment of an instrument, as extensively pernicious in its abuse, as it is beneficial in its natural use.”\*

Mr. Dane,† likewise, one of our own most learned jurists, and eminent also as a Constitutional lawyer, adopts in his abridgement recently published, Lord Mansfield’s and Camden’s opinion as an accurate definition of the liberty of the press; and this Supreme Court, the final expounder of the Constitution, in every conviction on a prosecution for a printed libel, has virtually declared the same doctrine. He then who asserts that those laws, which restrain and punish malicious, blasphemous and obscene libels, are unconstitutional, because they restrain the liberty of the press, has not truth on his side; and to mislead a Jury upon so important a point, is neither patriotic nor just. The unrestrained licentiousness of the press would soon lead to the unrestrained licentiousness of the club, the stiletto, and the pistol, and soon introduce among civilized men the malignant, revengeful, individual, cruel, unsparing warfare, which disgraces and brutalizes savage nations. Under the Constitution of the State, a man may use printing types as he chooses without being licensed or asking leave of any body, just as a man may go armed as he pleases without asking permission; types are weapons of offence and defence, of mischief and of good, as weapons of war are; but if a man with his printing types falsely and maliciously defames the character of his neighbour, or blasphemes the holy name of God, he is as much amenable to the consequences of the enacted and established law against those offences, as the armed man would be to the consequences of the laws against assault, batteries and murder, if he maliciously attacked and wounded or killed his neighbour with his deadly weapons.—Another illustration may be cited.—Some recent Statutes made it highly penal in a printer to advertise Lottery Tickets for sale; and there was a conviction before this Court, after arguments of able counsel, from which it would appear that that law was not deemed unconstitutional;‡ it was a lawful restraint upon the liberty of the press. Surely printing, publishing and sending into a thousand families, obscene and blasphemous libels of the grossest character will be deemed by all reasonable men as great an abuse of the press as the advertising of a Lottery Ticket for sale; and an abuse of the press not more protected or allowed by the Constitution. I pronounce it therefore a false and deceitful outcry, (one I believe that has been lately much re-echoed from one infidel station to another) that the liberty of the press has been invaded by this prosecution, when nothing more has been done than to put on trial the publisher of an obscene and blasphemous libel, and to ask for the punishment of the law against an unblushing violator of a public positive Statute of the Commonwealth; a Statute of as much obligatory force as the Statute against homicide. If in this prosecution, the liberty of

\* See also cases cited in Holt, p. 106—115. † Dane’s abridgement vol. 7, p. 52.

‡ Commonwealth vs. Clapp, 5 Pickering’s Reports, p. 41.

the press is invaded ; then there cannot exist such a thing as the licentiousness of the press ; nor such a prosecution as an Indictment for a printed libel, however false, infamous and malignant ; every possible abuse of the press must be considered as Constitutionally protected from punishment. To such an absurd and dangerous conclusion I cannot believe that any intelligent Jury can be misled, by any eloquence however commanding, nor by any harangue however dictatorial.

I proceed to examine another bugbear, which by a species of elaborate incantation has also been attempted to be raised by fancy out of the Constitution, and clothed in all the terrors which an exuberant imagination could lend to it. This prosecution, it is said, is an invasion of the liberty of conscience, a restraint upon free inquiry, an act of unlawful and unconstitutional intolerance and persecution. I consider these charges as an abuse of language, a misrepresentation, if not a wilful perversion of the truth. No man is here prosecuted for thoughts, for the exercise of his mind, for want of faith, or for excess of credulity. The law takes no notice of intellectual operations. Our law regards nothing but *overt acts* against religion, natural and revealed. A man may be as stupid and incredulous as an oyster, and have no more religious faith than stocks and stones, or he may be credulous enough to believe that nature created itself, or any of the other follies of infidelity, and the law meddles not with him. It is the open, vilifying, and malignant attack upon the general system of belief, upon the institutions of society, upon the foundations of law and morals,—such an overt act of treason against the public peace, and safety—which the Statute deems criminal. Openly, scandalously, obscenely, and wilfully blaspheming the holy name of God in the ways and manner described in the Statute is no lawful exercise of the liberty of conscience, no lawful mode of free inquiry ; and to repress by statutory penalties, gross, indecent, scoffing, and contumelious blasphemy is no act of unlawful or unconstitutional intolerance or persecution. You may believe in your heart what you please of any man's moral character ; but if you publicly brand him in a newspaper as a thief, a perjurer, an adulterer or an assassin, it is no persecution or intolerance to call you to an account for such libels, for acts disturbing the public tranquillity, and leading to quarrels and bloodshed. His peace, his reputation, his happiness, the peace and happiness of his wife and children and friends, are not to be assailed and prostrated with impunity. A man's fame or character is part of him, and a portion of his property, and often is as dear to him as his limbs or his life ; and a malicious libeller is as much amenable to the law for disturbing the peace of society, as a felonious assaulter or murderer ; and so is a wilful blasphemer of God's holy name. But freedom of thought, fair and reasonable discussion, decent argument and controversy are no where forbidden in our laws. The most latitudinarian liberal or radical of the present day is indulged with the utmost liberty

of conscience, and with perfect freedom of decorous and proper enquiry upon all subjects ; but malicious libels and wilful blasphemy are justly prohibited. After a collection and careful review of the reported cases upon this branch of jurisprudence, Mr. Holt (page 70,) very correctly observes, “the law does not prohibit reasonable controversy even upon fundamental subjects, so long as it is conducted with a tone of moderation, which shews that argument is the only purpose ; the writer abstaining from language and terms which are abusive and passionate, and therein indecorous towards the establishment, and offensive to the consciences of individuals. What is argumentative may very properly be left to be replied to by argument : what is passionate, and therein a disturbance of the proper economy of the State, cannot be so safely passed over to a defence by similar weapons.—Such a sufferance would be the endurance of brawls. When the law is moved against such writers, it is not persecution, it is a defence of the public tranquillity and decency.”

In this trial you have heard much declamation and much historical learning wasted upon the subject of religious persecution ; and the old and obsolete punishments of the pillory, the whipping post and the gallows, were made a kind of triad, or chorus, at the close of almost every paragraph of the Gentleman’s speech. In the present age of the world, and more especially in this free and happy land, nobody defends or practices persecution for conscience sake. The Gentleman has been attacking an undefended and defenceless castle in the air. He seems to have taken pleasure in straying among the ruins of political and religious establishments, which in past ages were erected by bigotry and intolerance in almost every part of the globe ; and, collecting with marvellous industry the scattered fragments, he has endeavoured to show forth the temple of persecution, and pourtray its horrors and cruelties, its sacrifices and victims, its terrific dungeons and bloody altars. He is indebted for some of his descriptions to historians and for some to imagination. To all which, I shall satisfy myself with giving you a very short answer from the Baron Montesquieu. It is all the answer the long and useless display of *such a collected* string of historical facts requires. In the “Spirit of Laws” Book 24, chap. 2, Montesquieu says, “To say that religion is not a restraining motive because it does not always restrain, is equally absurd as to say that civil laws are not a restraining motive. It is a FALSE way of reasoning against religion, to collect in a large work a long detail of the evils it has produced, if we do not give at the same time an enumeration of the advantages which have flowed from it. Were I to relate all the evils that have arisen in the world from the *Civil Laws—from Monarchy—and from Republican Government*, I might tell of frightful things.”

I will add, it is a trite and old artifice to argue against the use of a thing from its abuse.

But, Gentlemen, the age of persecution, like the age of chivalry, has gone by ; its temples, victims, altars and dungeons no longer exist but in fancy's sketch. Be not deceived, Gentlemen of the Jury ; sounding the tocsin of religious persecution at this time within this Commonwealth and within the territorial limits of Boston, the head quarters of liberality and toleration, is ringing a false alarm. Indeed it reminds one of the stale trick of a felon, who upon a larceny being discovered, was the first vociferously to cry Thief, and escaped by running away after an imaginary rogue. For if there be any persecution in the present times, then, Gentlemen, I throw back the charge of persecution upon the Infidels of the age. It is not Christianity that now persecutes Infidelity and Atheism ; it is Infidelity and Atheism that persecute Christianity. For years this has been the case. I need not remind you of the impious watch word of Voltaire and his associates, *Ecrasez l' infame—Crush the Wretch*. I need not ask you to remember the bitter and exterminating cruelties of the infidel Republicans of France, so eloquently described to you by the Gentleman himself, towards the Clergy and all professors of religion. I need not go to the French Robespierre—for persecution of religion. There is no necessity to go far for an example. I come direct to Abner Kneeland, who four years ago (New York, Nov. 2, 1829) by a proclamation under his own hand, in his attack upon the Evidences of Christianity, says to his adherents, “ We must march into the enemy's camp ; we must storm his strong holds, and throw open the brazen gates of his citadel.” Who was the persecutor then ? What too did Fanny Wright come here for, but to plant the standard of Infidelity, to raise an insurrection against Christianity, to make an open and gross attack upon our religious faith and our domestic happiness ; to open a rendezvous to gather volunteers to enter upon a crusade against Religion, marriage, chastity, order and decency, and the very foundations of civil society ? And what success has crowned her *tolerated* and not persecuted visit to this metropolis, how far from being *persecuted* was she, the vain glorious boasting of the Boston Investigator has proclaimed to the world. Julien Hall could not hold the troops of Atheism and irreligion ; a larger camp was obtained at the Federal Street Theatre ; and now twice or thrice a week they rally unmolested to discipline and prepare themselves for an exterminating warfare against all Christian opinions and institutions. Let me repeat the question, who are the persecutors, who the persecuted ? Who are the insulted and vilified ? Who the insulters ? What a shameful abuse of language it is for this defendant to cry out—*Persecution*. Look too to this libel now before you, see its scorn, contumely and insults. Consider its temper, object, motive, tendency and effect, and shut not your eyes to the truth. Consider how much the orderly, moral, and religious people of this metropolis have already tolerated and are tolerating, and judge you of the truth of the New York Infidel's exclamation, “ *The Inquisition in Bos-*

ton!" Where is it? Whoever here heard of it? If it is in the City, it is in the Federal Street Theatre, or the *conclaves* connected with it.

Gentlemen, I hope I have said enough about these abused and hackneyed topics, the liberty of the press, the liberty of conscience, the freedom of enquiry, and the charge of intolerance and persecution. I proceed therefore to call your attention to the precise question before you. I do not deem it either necessary or useful to follow the mazes of the elaborate speech of the defendant's eloquent Counsel. Much of it did not appear to me to be appropriate to a judicial investigation; it may figure in a pamphlet, and parts of be recited with admiration at the Infidel Theatre. The Book is already printed, and was before you had the argument!! Was it composed for you, or for other persons and purposes? Judge you. I prefer to ask your attention only to such parts of it as can have any bearing upon your Verdict. What is calculated only to make impressions elsewhere, I shall not waste your time and the time of this Court, pressed with other causes, to answer or refute.

You, Gentlemen, are placed in those seats to examine the subject carefully, and then simply to answer the question the Court will ask you. Your answer, and your whole duty in Court, will be confined to one word, *Guilty*, or at most to two, *Not Guilty*.

GUILTY OF WHAT?

Gentlemen, examine this Indictment which makes the charge, of wilfully blaspheming the holy name of God. Consider the answer to that charge. Look to the law, to see if there be one which prohibits blasphemy. Apply the evidence to this defendant—you will then have the means of deciding this case.

With your permission, I will go over this ground in your hearing, detailing to you the views and principles which I think ought to govern you on this occasion if you will regard your oaths and duty, and not consult your prejudices or partialities: and then I will take the liberty of suggesting some considerations why this law at this time and within the body of this County ought to be enforced.

1. The Indictment charges the crime of Blasphemy, and says it was committed by the publication of the Newspaper which has been put in evidence. The extracts inserted in the Indictment are true transcripts from the columns of that publication. Though the defendant is proved and has confessed himself to be the Editor and Publisher of that Newspaper, still he says he is not guilty of the crime alleged.

2. That is his answer to the Indictment,—not that he is not the publisher,—not that the existence of a God, his final judging of the world, the immortality of the soul, and a future state of rewards and punishments, are not denied in the publication,—not that the Saviour, the Holy Spirit and the Holy Scriptures are not reproached in the libel set forth;—upon these points there is little or no question—but admitting them all, he says, by his Counsel, there is no law against it, and

if there is, there ought not to be, because the Constitution allows of no such law. These are the main points of the defence; there are some others of minor importance which I will hereafter notice.

3. The third enquiry then is, is there any law against Blasphemy? There certainly is one in the Statute Book, because I have produced and read it to you; a law passed as all our laws are, and proved by the same evidence. Also, I have cited many authorities to prove to you, that if there had been no Statute Law upon this subject, Blasphemy is an offence at common law and has been for many centuries, and that the common law is part of the law of this land. The late Chief Justice of this Court, (in 8. Pickering's Reports, p. 312,) said, the ancient common law rested in tradition, or on some more ancient Statute, or on some judicial decision; and (in 2 Mass. Reports, p. 534,) the Court there said, "Our ancestors when they came to this new world *claimed* the common law as *their birth-right*, and brought it with them, except such parts as were judged inapplicable to their new state and condition." All the laws adopted, used, and practised upon, before the independence of the Commonwealth are expressly continued in force by the Constitution until altered or repealed by the Legislature. The Statute against Blasphemy does not alter or repeal either the common law or the Colony Laws in relation to the *corpus delicti*, the body of the crime, but only as to the extent of the punishment. In the language of Mr. Starkie, "a person offending under the Statute is still indictable at common law."\*—No reasonable man therefore can say with any truth that there is no law against Blasphemy.

But, it is said, further, that if there is such a law, there ought not to be. Who is to decide that question? Who is to sit in judgment upon the Legislature? Is any municipal law binding? Who has the right to abrogate the Constitution? Do we live under laws or not? Are there any laws against murder, robbery, perjury, treason, burglary, or any other crime? Who made those laws, who can repeal them? Have we any government, or are we still in a state of nature? If you will trouble yourselves to answer these questions you will discover the foundations of civil society; you will see that all power resides in the people; that they made a Constitution and frame of Government as the paramount law of society in this Commonwealth—that they caused that Constitution to be fairly engrossed on parchment and preserved with the utmost care among the Archives of the State, and ten thousand copies to be distributed among the people; that in that Constitution they defined and proclaimed the rights of man in civil society, and prescribed the principles of the Laws and how the law makers should be chosen, and how they should make the laws; and that Constitution and the laws made under it have been in successful and admired operation for upwards of half a century. That Constitution was formed by christian men, and provided for the permanency and support of the

---

\* See also Fitzgibbon, p. 66. 1 Salk. p. 460.

Christian Religion, and nearly a hundred statutes have been made in relation to religion, parishes, different denominations of Christians, and divers public offences against God and Religion—and now for the first time we are told there ought not to be a law against Blasphemy, an offence prohibited by positive statutes ever since the settlement made at Plymouth by our forefathers (who were so much eulogized yesterday by the defendant's counsel) and severely punished in many antecedent centuries by the Common law of England, which those forefathers brought with them to America and claimed as their birth right! Even the heathen in all ages and countries, civilized and savage, punish in an exemplary manner all insult upon their Gods. Hear what Plato says on this subject, (on laws, lib. 10.) “Those are guilty of impiety toward the gods, who deny their existence; or who, while they believe it, maintain that they do not interfere with what is done below.” In Athens we know in a memorable instance such supposed impiety was punished with death.

But independent of the gross wickedness of Blasphemy in a religious point of view in all religious communities, and especially in a christian civilized society, where the general faith and the consciences of men regard the essential principles of religion with respect and reverence, and repose upon their influence and operation for safety and security, for virtue and innocence, for truth and justice in the diversified and innumerable transactions of men, blasphemy is a temporal as well as a spiritual offence, and the law has so considered it without exception. No case can be found, where it has been allowed by law, or decreed to be unpunishable and innocent. On the contrary, a series of uninterrupted decisions, which can be traced for four or five hundred years, and which have been approved by the wisest and best men that ever breathed the breath of life, both in England and America, a series of such decisions has been referred to, most conclusively and for the best reasons, pronouncing the law to be against Blasphemy as a temporal offence against *Government* and punishable as one of the greatest crimes against society, as well as against God. In the opening of this cause, I merely glanced at those decisions. It is my intention to be more particular now. As it is said you are to be the judges of the law in this case as well as the fact, I trust you will not deem me taking an unnecessary course. I am directing your attention to the law as decided by those, whose education, studies, professional duties and lives have been devoted to the subject, men high

on the roll of fame and honor for learning, integrity and talents, men who were guided by the light of truth and conscience as they advanced in the path of duty, and have received the eulogium of all American Judges.

[Here Mr. Parker introduced the authorities, English and American, which are cited in pp. 50, 51, of this pamphlet. He read many of them to the Jury, particularly some passages from Mr. Erskine's speech in Williams' case, and Sir Vicary Gibbs' in Eaton's case. But with a running commentary he most closely applied to the case now on trial, Chief Justice Kent's opinion in Ruggles' case in 8. Johnson, Judge Duncan's opinion in Updegraph's case in 11. Sergeant and Rawle, and Chief Justice Parsons' opinion in the case of Barnes vs. Falmouth. He asserted *there was nothing new* in Mr. Dunlap's arguments; they had all been urged and overruled before; and he spent an hour or more in pointing out and explaining the Judges' answers to the defendant's objections.]

Now in opposition to these authorities we have a letter of Thomas Jefferson—and whatever else the Gentleman could bring to bolster it up. I promised you that if that letter was introduced, I would endeavour to satisfy you that the argument it contained had no substance or weight in it—and I will now attempt the performance of that promise.

About ten years ago, Major Cartwright, an octogenarian English reformer, wrote a book with a title, "The Constitution produced and illustrated." Like others of his works (for he was voluminous like Cobbett) it fell still born from the press, but he thought it deserving of a passage across the Atlantic Ocean, and he sent one to Mr. Jefferson, then also an Octogenarian. You, Gentlemen, doubtless know, that the English Constitution, whatever it may be, is unwritten, having grown up into a system, like the common law, from customs, usages, and prevalent principles. Still it is somewhat indefinite. Unlike the prescript Constitutions of several of the United States, it cannot be produced in black and white, and subjected to verbal criticism or grammatical and reasonable construction. It has therefore been the subject of much dispute, especially within the last fifty years, since the question of Reform began to agitate England. Many contend that the Constitution is but the will of Parliament, that Parliament is omnipotent, &c. Others deny this doctrine. Major Cartwright wrote much on this vexed question, and finally published the Book I have just mentioned with the imposing title. His notion is, that the English

Constitution was created and formed by the Anglo Saxons, some traces of which are still discoverable in the laws, history, usages and customs of the Saxon Heptarchy. He produces a few detached parts, and argues—*ex pede Hercules*.—All that he finds inconsistent with his views, he very complacently and with a magisterial air calls legislative or judicial usurpations; and he seems to think that what cannot be traced to the Anglo Saxons cannot be constitutional. Much of his theory is fancy, more especially as the primitive Anglo Saxons were as unlettered as the aboriginal Indians of our country; and his theory has floated away like the fabric of a vision. Mr. Jefferson thought proper to return thanks for the present of Major C. and yielding to old age's propensity to garrulity, he wrote back a communication which he himself calls a "long and rambling letter." Among the various matters that his pen touched upon, was Christianity, his hostility to which was notorious all his life long. He steps out of his way to throw an imbecile dart—*telum imbecile sine ictu*—at this system of religion, and exhibited at once a proof of his senility and injustice. This letter, so much eulogized by the defendant's Counsel, contains these six propositions, which I propose briefly to examine, and hope to refute.\*

---

\* The following extract from Mr. Jefferson's letter will show whether or not it contains the six propositions attempted to be refuted.—"I was glad to find, in your book, a formal contradiction, at length, of the judiciary usurpation of legislative powers; for such the judges have usurped in their repeated decisions that Christianity is a part of the common law. The proof of the contrary which you have adduced is incontrovertible, to wit, that the common law existed while the Anglo Saxons were yet Pagans; at a time when they had never yet heard the name of Christ pronounced, or knew that such a character had existed. But it may amuse you to show when and by what means they stole this law upon us. In a case of *quare impedit*, in the year book, 34, H. 6. fo. 36. (1453) a question was made how far the ecclesiastical law was to be respected in a common law court? And Prisot, c. 5. gives his opinion in these words—*A tiel lie que ils de seint eglise ont en ancien scripture, covient a nous a donner credence; car ceo common ley sur quels tous manners leis sont fondes; et auxy, sir, nous sumus obliges de conustre leur ley de saint eglise; et semblablement ils sont obliges de conustre nostre ley; et, sir, si petit apperer a nous que l'evesque ad fait come un ordinary fera en tiel cas, adonq nous devons ceo adjuger bon, ou auterment hemy,*" &c. See S. C. Fitzh Abr. qu. imp. 39; Bro. Abr. qu. imp. 12. Finch in his first book, c. 3. is the first afterwards who quotes this case, and misstates it thus—"To such laws of the church as have warrant in holy scripture, our law giveth credence," and cites Prisot, mis-translating "ancient scripture," into "holy scripture," whereas Prisot palpably says "to such laws as those of holy church have in ancient writing, it is proper for us to give credence; "to wit, to their ancient written laws." This was in 1613, a century and a half after the dictum of Prisot. Wingate, in 1658, erects this translation into a maxim of the common law, copying the words of Finch, but citing Prisot. Wingate, max. 3. and Shepherd, tit. "Religion," in 1675, copies the same mis-translation, quoting the Y. B. Finch and Wingate. Hale expresses it in these words, "Christianity is parcel of the laws of England. 1 Ventr. 293, 3 Keb. 607, but quotes no authority. By these echoings and re-echoings, from one to another, it had become so established in 1728, that in the case of the King

1. That the English Judges have usurped legislative powers in their repeated decisions that Christianity is a part of the common law.

2. That the proof of the contrary which Major Cartwright has adduced is incontrovertible, to wit, that the common law existed while the Anglo Saxons were yet Pagans, at a time when they had never yet heard the name of Christ, and that that is proof Christianity is not part of the common law.

3. That the English Judges *stole* this law upon us.

4. That Sir Henry Finch mis-translated the words of Prisot.

5. That the words "ancien scripture" mean the ancient writings of churchmen, that is, the ancient ecclesiastical or canon law.

6. That all the common law authorities hang, link by link, one upon another, and ultimately all upon one and the same hook, and that a mis-translation of the words *ancien scripture*.

I think the reverse of these propositions can easily be maintained, and Mr. Jefferson's name will give them no more credit, than it did to his calumnious attack upon the venerated Washington.

1. The repeated and constant decision of the English Courts that Christianity is a part of the common law, is pronounced a judicial usurpation of legislative powers. This seems to me a libel upon the Judges. What is the common law, of which it is said the general principles of christianity are a part? Blackstone says the laws collected and published by Alfred (*legum Anglicarum conditor*) and re-published (with the additions and improvements which a century and a half had suggested,) by Edward the confessor (*restitutor—legum Anglicarum*) are the laws which gave rise and origin to that collection of maxims and customs which is

---

vs. Woolston, 2 Stra. 234, the court would not suffer it to be debated, whether to write against Christianity was punishable in the temporal courts at common law? Wood, therefore, 409, ventures still to vary the phrase, and says "that all blasphemy and profaneness are offences by the common law," and cites 2 Stra.; then Blackstone, 1763, IV. 59, repeats the words of Hale, that "Christianity is part of the common law of England," citing Ventris and Strange; and finally Lord Mansfield, with a little qualification, in *Evan's case* in 1767, says "that the essential principles of revealed religion are parts of the common law," thus engulfing Bible, Testament, and all, into the common law, without citing any authority.—And thus far we find this chain of authorities hanging link by link upon one another, and all ultimately upon one and the same hook, and that a mis-translation of the words "ancien scripture" used by Prisot. Finch quotes Prisot; Wingate does the same; Shepard quotes Prisot, Finch and Wingate; Hale cites nobody; the court, in Woolston's case, cites Hale; Wood cites Woolston's case; Blackstone quotes Woolston's case, and Hale; and Lord Mansfield, like Hale, ventures it on his own authority.—Here I might defy the best read lawyer to produce another script of authority for this judioiary forgery."

now known by the name of the common law. Mr. Reeves\* says, The common law consists of those rules and maxims concerning the persons and property of men, that have obtained by the tacit assent and usage of the inhabitants of this country, being of the same force with acts of the Legislature. Some of the common law is derived from the Britons, and some from the Romans, from the Saxons, the Danes, and the Normans. To recount what innovations were made by the succession of these different nations would be impossible at this distance of time. "Our laws, says Bacon, are as mixed as our language, and as our language is so much the richer, the laws are more complete."

The early history of the Island of Great Britain shows it first in the possession of the Picts and Britons, next of the Romans, then the Britons again, then the Saxons, then the Danes, then the Saxons again, and then the Normans. The Common law, says Crabbe,† had that name because it was the common municipal law or rule of justice in the kingdom, drawn from the several particular codes then in use, and because it was admitted by the common sense of mankind. It was called *lex terræ*, or the law of the land, because it was, as it were engrafted into and became a part of the Constitution of the country.

Lord Hale† says, there is no complete series of Acts of Parliament, or of judicial decisions, so that use and custom, judicial decisions and resolutions, and acts of Parliament, though not now extant, might introduce some new laws, and alter some old, which we now take to be *the very Common law itself*, though the times and precise periods of such alterations are not explicitly or clearly known.

Such being the common law, of which it is said that Christianity is a part, let us see whether the incorporation of it into that law arose from *judicial usurpation*, as Mr. Jefferson says. Upon this point, Mr. Jefferson was either lamentably ignorant, or wilfully unfair. A few historical memoranda will convince you of the truth of this assertion.

In the year of our Lord 274, nearly sixteen hundred years ago, Constantine the great, (the first Christian Roman Emperor,) when he assumed the imperial purple was living at York in England, where his father Constantius died. Britain was then part of the Roman Empire. The Christian Religion became established in

---

\* History, English Law, pp. 1, 2. † Crabbe's History of English Common Law, p. 2.

† History of Common Law, p. 133.

the reign of that Emperor. The Roman power, extending its government, religion and laws into all its provinces, continued in England until the year 448, nearly two centuries before it finally expired in that Country. The Anglo Saxons invaded Britain in 450, but many of the Romans and aboriginal Britons remained there, retaining their religion and many of their laws. Ayliffe says, (Introduction to Parergon, p. 30) "The Saxons were not wholly destitute of religion before Gregory sent Austin into England; this is evident from the Saxons keeping Easter *more Asiatico*, which custom continued against Austin's will for fifty years after his coming into England. And it had been a miraculous ignorance had the Saxons conversed with Christian Picts and Britons above a hundred and fifty years without the least sense of their religion." In 550 the Saxons themselves were converted to Christianity, and the principles of the Christian Religion were interwoven into the laws of the realm. In 596 Canterbury was the see of an English Bishop well endowed by royal bounty. Of course Christianity at that time was well established among the Saxons. There was an ecclesiastical council summoned by the Saxon authority in 664; and in 680 four kings of the Saxon Heptarchy convened a synod at Hadfield, which received the canons of five general councils.\* The Danes attacked the Saxons in 787, more than a century after the Saxons had embraced Christianity, and the Danes themselves became Christians. In 878 the Danes were expelled by Alfred, and the Saxons obtained the dominion again. The growth of Christianity in this kingdom, says Lord Hale,† and the reception of learned men from other parts, and the credit they obtained here, might reasonably introduce some new laws, and antiquate or abrogate some old ones that seem less consistent with the Christian doctrines; and by this means introduced not only some of the judicial laws of the Jews, but also some points relating to, or bordering upon, or derived from the canon or civil laws, as may be seen in those laws of the ancient Kings, Ina, Alfred, and Canutus, &c. collected by Mr. Lamberd.

The same learned writer says, "as exigencies and conveniences do insensibly grow upon the people, so many times there grows insensibly a variation of laws, especially in a long tract of time."

So far is the libellous charge of *usurpation* on the part of the Judges, from being true, that the legislative and royal enactment of Christian laws may be proved from authentic documents still ex-

---

\* Ayliffe's Introduction, p. 31.

† History of Common Law, p. 132.

tant. In the case of *Swan vs. Brown* (reported in the 3. Burrowes, 1598) the opinion of the Court of King's Bench was delivered in 1764 by Lord Mansfield, and was afterwards affirmed in the House of Lords. It was a case upon a land title, in relation to a common recovery, and it involved a question upon the validity of certain acts done on a Sunday, or Christian Lord's Day. The origin and force of the law was traced by that learned Judge. A canon was made in the year 517 that no cause should be tried on a Sunday; it was ratified by Theodosius, decreed verbatim in the capitulars of the Emperors Carolus and Ludovicus, received and adopted by the Saxon Kings, (see Laws of Edward the confessor chapter 9) and these canons and constitutions were confirmed by William the Conqueror, when the Normans subdued England in the year 1066 and afterwards also confirmed by King Henry the Second, and so says Lord Mansfield, became part of the Common law of England.

\**Dies Dominicus non est dies juridicus*, is one of the most ancient maxims of the Common law, and is a *Christian* maxim.

Mr. Reeves says, (page 67.) It is beyond dispute that a canon law of some kind had *long been established* in England before William the conqueror, BY THE SANCTION OF THE LEGISLATURE, as may be seen in Mr. Lamberd's collection of Saxon constitutions.

In Mr. Crabbe's History of the English law, page 4, it is stated that some parts of the canon law were adopted at an early period by the Saxons. The same author says in another place (page 5) *usage* prevailed among the Saxons in *ecclesiastical* as much as it did in secular affairs.

It will appear from historical works of great credit, that before the Saxons crossed from Germany into England, Christianity prevailed among the Britons, and Mr. Hume says (chap. 1,) "to the disunion of counsels were also added the disputes of theology; and the disciples of Pelagius, who was himself a *native* of Britain, *having increased to a great multitude*, gave alarm to the clergy." "After this they sent into Germany a deputation to invite over the Saxons for their assistance." This was about the year 448. A contest for one hundred and fifty years ensued, and then the Saxon Heptarchy was established. Ethelbert, King of Kent, introduced Christianity into his kingdom, and it extended to all the other Sax-

---

\* Noy's Maxims, Co. Litt. 341 a.—Wingate's Maxims 3. 2 Inst. 264.—Plowden 265.—Dyer 181. b.—Dyer 162, pl. 17.—1 Salk. 78.—5 Mod. 95.—Hobart 149.

on governments. "All the other Northern conquerors, says the historian, had been already induced to embrace the Christian faith, which they found established in the empire." Ethelbert enacted with consent of the states of his kingdom a body of laws, the *first written laws ever promulgated by any* of the Northern conquerors. He reigned fifty years and died in 616. Many years after this, the Saxon King Alfred converted a whole army of Danes to Christianity. He too framed a body of laws, as we are told by Hume, which, though now lost, was long the basis of English jurisprudence, and the ORIGIN of the common law. He died in 901. Some years afterwards, Edward the Confessor compiled a body of laws, which he collected from the laws of Ethelbert, Ina, and Alfred, and these now also lost, were long an object of affection to the English nation, and were confirmed by William the conqueror, and also by Henry the second. We have also Ayliffe's authority (Parergon 471) that "in England *all Sundays* were observed by our ancestors, *the Britons*. In Saxon times, King Ina and Alfred made a law preventing work on the Lord's day; and under the Danes, Canutus made a law at Winchester to the like effect."

Indeed the law books and books of history are prolific in passages directly contradicting Mr. Jefferson's calumny upon the Judges; and his charge of their *usurpation* in this particular is founded according to my views on ignorance or dishonesty.

2. In the second proposition, (to wit, that Major Cartwright's *proof* that Christianity is not part of the Common law is incontrovertible, *because* the Common law existed while the Anglo Saxons were yet Pagans and had never heard the name of Christ,) the argument proceeds upon an assumption that nothing is part of the Common law but what existed and was acted upon by the Pagan Saxons. This is wholly untrue, and so known by every lawyer. A few citations and references will convince any one of the futility of such an argument. The common law is the collected wisdom of ages, and much of it did not exist in the time of the Saxons. Mr. Reeves, in the passage before cited, says some of it was derived from the Britons, some from the Romans, some from the Saxons, some from the Danes, and some from the Normans; and what proportion from each nobody can tell. Mr. Crabbe says (page 5,) considering the *gradual* manner the most parts of the law have grown up, notwithstanding the several changes, the general frame of the laws has been preserved, and such additions have been made as have added much to its improvement. I have already

referred to Lord Hale,\* and Lord Bacon. I might particularly refer to many branches of the common law wholly unknown to the Pagan Saxons, especially to those comprehensive branches including land titles, feudal tenures, mercantile law, &c. It is needless to waste your time on this topic. I shall satisfy myself with the authority of Chancellor Kent and Judge Story, who doubtless knew as much of law as Major Cartwright, who was first a Navy Lieutenant, and afterwards a Militia Major, or Mr. Jefferson, whose politics or prejudices blinded him when looking upon law questions. Chancellor Kent says, "a great proportion of the rules and maxims which constitute the immense code of the Common law grew into use by gradual adoption."

In a recent publication (Conflict of Laws chapter 2, sec. 24, page 25) Judge Story says, "In England and America the Common law has been expanded to meet the exigencies of the times."

It is therefore clearly manifest that much of the Common law did not exist in the Saxon times, and an argument based upon the assumption of Major Cartwright is founded on a fallacy; and it also appears from these historical memoranda and dates how early even among the Saxons the principles of Christianity were known, respected and interwoven into their laws and customs; nearly NINE CENTURIES before the year Book of 34. Henry 6. [1453.] upon a supposed mistranslation of which Mr. Jefferson inaccurately and improperly states the whole doctrine depends, that Christianity is part of the Common law.

3. The third clause of Mr. Jefferson's libel upon the Judges, (that they *stole* this law upon us, that christianity is part of the common law,) will be found equally void of foundation:

1. Because christianity was the religion of the Roman Empire while Great Britain was a Roman Province, and many Picts and Britons were Christians before they sent for the Saxons:

2. Because the Saxons were early converts to christianity, and many of the Saxon kings *with the consent of the States of their kingdoms*, ENACTED laws (now lost, but still a part of the common law,) with regard to the observance of the Lord's day, and other Christian institutions: recognizing expressly the principles of christianity, and enforcing its precepts, a part of the common law being derived from usages and traditions growing of those very same lost Statutes:

3. Because it appears from history, (1. Reeves' p, 67,) that parts

---

\*History of Common Law, p. 133.

of the canon law received the sanction of a Saxon Legislature, and thereby became incorporated into the laws of the kingdom and common law:

4. Because authentic history also shews that many usages, customs, and laws of the country universally prevalent grew out of the maxims, essential principles, rules, and doctrines of the Christian Religion, upon which many lost Statutes were based :

5. Because christianity having been the established religion of England for TEN CENTURIES before Sir Henry Finch published his Book of Law, in which it is said the first mis-translation occurred, on which Mr. Jefferson says the doctrine hangs, there was no necessity to *steal* or *smuggle* the doctrine upon the people; there was nothing novel in it; it had been the law *for ages*; *nothing new was introduced* by the Judges; they merely declared what was old, what had been in use time out of mind before, and what was never denied—what had been long consented to by the people, and acted upon in the Courts:

6. Because had the Judges usurped any legislative power, and stole a march upon the people; the King and Parliament, the lawyers and the people themselves, must have sooner or later seen it, and known it, and would have corrected it, by an Act of Parliament, or otherwise, and never acquiesced in a judicial usurpation:

7. Because if the fact had been so, the generations of four successive centuries would have produced some minds among lawyers, Judges, or Statesmen, equal to those of Major Cartwright and Thomas Jefferson, and the fact would have been discovered, and published and corrected in England itself long before the year 1824, in the nineteenth century, and not been left to Mr. Jefferson only to discover.—To these reasons I will add what Chancellor Kent says of the English Judges. He knew the characters and history of the whole race of them, and we may rely on his discernment and regard for truth. “Every person, says he, (1. Commentaries, p. 463,) well acquainted with the contents of the English reports, must have been struck with the UNBOUNDED INTEGRITY and LOFTY MORALS with which the Courts were inspired. I do not know where we could resort among all the volumes of human composition, to find more constant, more tranquil and more sublime manifestations of the intrepidity of conscious rectitude. If we were to go back to the iron times of the Tudors, and follow judicial history down from the first page in Dyer, to the last page of the last Reporter, we should find the higher Courts of civil judica-

ture, generally and with rare exceptions, presenting the image of a temple, where truth and justice seem to be personified in their decrees." After such an eulogy, *laudati a viro laudato*, I think nobody will believe Mr. Jefferson's libel of THEIR *stealing* any thing upon us.

4. In the fourth branch of Mr. Jefferson's libel, in which he says Sir Henry Finch was guilty of a mis-translation, ("a judiciary forgery,") I think he is equally in error. Who was sir Henry Finch, and in what language was his treatise written? Did he understand the language of the year Book? Could he translate his own treatise into English? Did he use fairness in placing the original passage in the year Book alongside his translation? The answer to these questions will refute Mr. Jefferson's slander upon him.

Sir Henry Finch was a learned Serjeant at Law. He published in 1613, his discourse upon the Law in four books, originally written in French, and afterwards by himself "done into English." His learning, style, and accuracy are commended by Chancellor Kent, (1. Comm. 474.) As he originally wrote his treatise in the same language in which the Year books are written, and was celebrated as a very learned lawyer, there can be no doubt that he understood that language, and it is clear that he intended no mis-translation, because all law proceedings were then in Norman French and that dialect was well understood by all lawyers and Judges of the age, and in his English translation of his Book, alongside the English words "To such laws of the church as have warrant in the holy scripture our law giveth credence," he prints in the margin the very words of Prisot in the Year book of 34 H. 6. 40. 'A tiels leys que eux de sainte eglise ont en ancien escripture, covient pur nous adonot credence: car ceo est common ley, surq: tous manner leys sont fondues,' &c.

Now the question is, what do the words *ancient scripture* mean? Finch says they mean *holy scripture*, (to wit, the Bible, the most ancient of all writings, and the maxims, principles and rules derived from it and incorporated into the common law.) Mr. Jefferson says this is a mis-translation, "a judiciary forgery."—He declares that Prisot palpably says, "to such laws as they of holy church have in *ancient writing*", it is proper for us to give credence, to wit, *to their ancient written laws*"—*id est*,—the ancient written laws of churchmen. Now I think Sir Henry Finch was a better scholar, a sounder lawyer and a fairer man, than he was, who accused him of mis-translation and forgery, and that

5. Mr. Jefferson's assertion that the words *ancient scripture*, as used by Prisot, do not mean the holy scriptures, and the principles, rules and laws derived from them, is manifestly erroneous. The context demonstrates this. Mr. Jefferson says "*ancien scripture*" means the ancient written laws of those of the holy Church, that is, the ancient canon law or ecclesiastical laws. Now this cannot be Prisot's meaning, for his next words are, "*car ceo est common ley, surq: tous manner leys sont fondues,*" for this is the common law upon which all manner of laws are founded. What common

law ? certainly not the ecclesiastical laws, limited to church discipline &c., because the other laws were not founded upon them. Prisot expressly refers to a common foundation and origin of some of the common law and ecclesiastical or canon law—something paramount to both, to wit, such laws and maxims as have warrant in holy scripture and have been incorporated into the laws of the land ; his words are, “*et auxy, sir, nous sumus obliges de conustre leur ley de saint eglise, et semblablement ils sont obliges de conustre nostre ley,*” and so, sir, we are obliged to recognize their law, of holy church, and likewise they are obliged to recognize our law. Why so ? because both laws, the canon and common law, have a common foundation and origin in many particulars in ancient scripture, that is, the holy scriptures. Now I am of opinion that if there is any *mis-translation*, it is the wilful act of Thomas Jefferson, and not of Sir Henry Finch ; and this opinion is strengthened by the marvellous fact, that no other human beings but Thomas Jefferson and Abner Kneeland’s counsel have ever thought it a mis-translation, or ever said so—not one of the English lawyers who defended the several Blasphemers in the English Courts—not one of the English Judges or text writers—not one of the American lawyers or Judges.

6. In the sixth particular, Mr. Jefferson is equally unfortunate in his assertion. His language is, “we find this chain of authorities hanging, link by link, upon one another, and all ultimately upon one and the same hook, and that a mis-stranlation of the words “ancient scripture” used by Prisot. Finch quotes Prisot—Wingate does the same, Shepard quotes Prisot, Finch and Wingate. Hale cites nobody ; the Court in Woolston’s case cites Hale ; Wood cites Woolston’s case ; Blackstone quotes Woolston’s case and Hale, and Lord Mansfield, like Hale, ventures it on his own authority.”

Now instead of these authorities hanging link by link on each other, only Finch, Wingate and Shepard rely on Prisot, only three links on that hook, and nothing hangs on those links, as Lord Chief Justice Hale, in his learned treatise, derived his knowledge from other sources, from what was so universally known and acknowledged to be the law, so often acted upon, and so undeniable, that he deemed it wholly superfluous to cite any authorities, as we should now think it unnecessary to cite authorities to prove that a man might be sued on a Promissory Note for money after it was due. All the Judges in Woolston’s case, (Lord Raymond and others) well versed in the law, knew the law to be as Hale stated it. Woolston’s case was considered as sound law, and Wood and Blackstone relied on that case and on Hale ; and Lord Mansfield deemed it wholly needless to cite any authorities for a principle of law so universally acknowledged. Instead therefore of all these authorities hanging on Finch’s translation of Prisot’s words, it is now SOME CENTURIES since Finch, Wingate or Shepard have been relied upon or quoted as an authority to this point in the Courts ; and thus we see what the value is of Mr. Jefferson’s assertion. I will add that his vain glorious challenge might safely be accepted

by any member of the bar. With much self complacency he says, "Here I might defy the best read lawyer to produce another script of authority for this judiciary forgery," that is, that Christianity and Religion are parts of the Common law, and that offences against them are punishable at Common law; that is the point to which he challenges authority.

Now in addition to all the authorities derived from the Saxon laws prior to the Norman conquest, and all the authors I have already cited, I will refer to a Book written *some years before* the 34th, of Henry the 6th, when Prisot used the words which Finch translated. So far from its being any *forgery* to write that offences against religion were punishable at common law, the law in that particular was settled and known before 1453, when that year book was written. Prior to 1442, Lyndwood wrote his *Provinciale*, for he died in that year. It has ever been considered as a book of great authority. It is often cited by Ayliffe and other writers on the ecclesiastical law. In the first chapter is this passage—"The proper meaning of Blasphemy, *when used at the common law*, appears to be an injury offered to the Deity, by denying that which is due and belonging to him, or attributing to him what is not agreeable to his nature." I am not certain that the book can be found in this Commonwealth, but the passage quoted may be found in a note at the foot of page 396 of the 4th vol. of Petersdoff's *Abridement*. So here is an authority much higher up in antiquity than Mr. Jefferson's hook, on which, he ignorantly says, all the authorities hang. I believe I may now safely dismiss Mr. Jefferson and his letter from this case. It is not the only instance in which his controversial writings exhibit very little candour, fairness or love of truth. If I have succeeded in making you agree with me as to the value of his law opinions, I think the influence of his name, extravagantly lauded as it has been, will not have much effect on your Verdict in this trial.

Nine months before this blasphemous libel was published, Judge Story, one of the most thorough lawyers and eminent Judges in America, renowned for talents, learning, industry and integrity, attacked this opinion of Mr. Jefferson in the *Jurist* for April 1833. The article has his initials, and has been universally ascribed to him. Mr. Jefferson's opinion therefore is also refuted under the sanction of a name much more celebrated and esteemed than his own in this department of science.

(Here the article in the *American Jurist* was read.)

I have to thank the defendant's Counsel for this confirmation of my opinion, for I never saw that article until he brought it into Court yesterday. Had I met with it before I made my own investigation, I should have contented myself with the vast preponderance and weight of an opinion of Judge Story in a matter of law, over that of Mr. Jefferson, and not troubled myself to have searched further for a refutation of the flippant and superficial judgment of the *Virginian Voltaire* upon this subject.

I regret much to be obliged to add here, Gentlemen, that I am

apprehensive, my brother on the other side, seduced by his admiration for Mr Jefferson, has been lead to follow his example in making false accusations, and to charge on Sir Philip York, who was the King's Attorney General a hundred years ago, a similar fraud to that Mr Jefferson so groundlessly charged on Sir Henry Finch, the King's Sergeant. I do not know that I ever saw a greater piece of *unfairness*, shall I call it? or a greater misrepresentation than the gentleman in his heat and hurry the day before yesterday, and probably by accident, committed, when he boldly and rashly asserted to you, that an abominable fraud was committed by the King's Attorney on the Court and all English Lawyers and Judges, a fraud which was never found out until the eagle eye and acute investigation of Abner Kneeland's Counsel discovered it in this trial on this side of the Atlantic. Just like Mr. Jefferson's conduct, if there is any thing wrong in the matter, it is his own blunder, and no fault or fraud in the Attorney General. Nothing can be more plain than this. The question in Curl's case was whether immorality as such was indictable. Sir Philip York maintained the affirmative, and went into an argument and cited his authorities, and there is no misrepresentation about them. All is just as he said. There was no misleading the Court, not the slightest inaccuracy—and the charge of fraud by the defendant's Counsel upon examination, vanishes into air, thin air, mere wind. I will explain the matter in a very few words, and I think very clearly.

(\*Sir Philip York was here vindicated by producing and reading the authorities referred to, and which sustained his position.)

I fear, Gentlemen, that I have become tedious to you in the examination of these law authorities. It seemed to me to be necessary to go through with them, that no reasonable doubt might remain on your minds upon the two main points under consideration. 1. Whether there be in point of fact a law against Blasphemy, and 2dly, whether if there be, it is not proper, reasonable, *Constitutional* and just.

The correct rule for a Jury, who are Judges of the law in criminal trials, and for Judges *in all trials*, to act upon in cases where *Constitutional questions* arise, is well laid down by the late Chief Justice of this Court, in the case of Adams and Howe, 14 Mass. Repts. 345, and I think should be adopted by you on this occasion. "So much respect is due to any Legislative act solemnly passed, and admitted into the Statute book, that a court of law, which may be called upon to decide its validity, WILL PRESUME IT TO BE CONSTITUTIONAL, *until the contrary CLEARLY appears*. So that in any case of the kind substantially doubtful, the law would have its force. The legislature is, in the first instance, the judge of its own constitutional powers, and it is only when *manifest assumption of authority or misapprehension of it*, shall appear, that the judicial power will refuse to execute it."

---

\*See Curl's Case reported in 2 Strange 789.

Now if after hearing these numerous, judicial and well founded authorities, and the reasons upon which they are grounded, and the rule you ought to adopt for your present guide, you can CONSCIENTIOUSLY say, that there is no law against blasphemy, and ought to be none, or that the Statute is unconstitutional; then the defendant must be acquitted, and the world will know that there are twelve Jury men in Boston, who believe themselves to be wiser than all the Judges and Lawyers who ever studied the laws. I hope such a disgrace in the administration of justice will never happen in our city.

But if on the contrary you should be satisfied by what you have heard from the Counsel, and what you will hear from the Hon. Judge, whose duty it will be to instruct you upon the law of this case, that there is a valid law against Blasphemy, constitutional and in force; then, Gentlemen, you will proceed to take the next step in the cause and consider the evidence I have placed before you, in reference to that law.

And first, Gentlemen, let me enquire whether or not you have sufficient evidence that Abner Kneeland was the Editor and publisher of the Boston Investigator of the 20th of December last?—The testimony is that of the Printer, who best knew the fact. There can be no mistake about this, because his testimony by the agreement of the Counsel on both sides has been distinctly read to you from the notes of the Judge who wrote it down. It is a fact too, which the defendant, I believe, has never denied. But in this part of the case there is one or two of the minor parts of the defence which I promised to notice.

This Number of the newspaper was issued from the press while Mr. Kneeland was absent from the city. His Counsel doubts his *criminal* liability, therefore, for the first article, the obscene passage on the first page, because not received from his hand. He does not deny his accountability for his anonymous correspondent's article on Prayer, which was inserted by his direction, nor his liability for his own piece, printed by his express order from his own manuscript. Should you be of opinion, that his accidental absence from the city for a day or two formed any excuse for the appearance of the obscene article, still enough of Blasphemy remains in the other two articles to justify the general Verdict of Guilty, because only one charge is made—to wit, *wilfully blaspheming the holy name of God*, and the different articles are blasphemous in different ways, but amount each equally to the whole crime.

But, Gentlemen, as I understand the law, *he is criminally* answerable for that obscene article, though he might be absent, when it made its appearance abroad. He had begun to reprint in his paper a series of Numbers from a New-York Infidel newspaper. Numbers one and two had been printed by his orders—Number three arrived in his absence, was taken from the Post Office and printed by his Agents, acting for him, and within the scope of their authority in making up his newspaper and publishing it in his absence. He left nothing else to be put in its place. He gave no orders not to have Number three published before he saw it. He

did give orders to have his paper completed and published, and left it to his servants to make it up and publish it; and furthermore, what is quite material, he never disavowed it, he never disapproved it, nobody was rebuked for putting it in, he did not publish any disapprobation or apology for its appearance, and he must therefore be presumed to have approved of it, and confirmed the acts and doings of his servants in relation to it, and to have become willing that the world should hold him as Editor accountable for it. Let us test this presumption by putting a case for your consideration. Suppose in the absence of an Editor of a public journal, his foreman should print an infamous libel upon a citizen, most grossly abusing and insulting a respectable and innocent man, and holding him up to hatred, scorn and ridicule, and suppose the next day the Editor should return and read his paper and see the abominable article, and keep quiet, saying nothing about it, publishing succeeding papers and making no apology or recantation, and in his office finding fault with nobody, never rebuking his foreman, or expressing the slightest disapprobation of his conduct in inserting the scandalous publication, could any reasonable man doubt that such an Editor approved of the insertion of the Libel, and was criminally answerable for it? The Law, Gentlemen, as pronounced by some of the most celebrated Judges and Authors, carries the principle of criminal liability far beyond such a state of things. I will place a few of the authorities before you.

If booksellers or hawkers publish or sell libels, though they know not the contents of them, yet they are punishable; the public peace ought to be more regarded than a private interest. (Wood's Inst. p. 445.)

In *Rex vs. Dod*, (Holt's Law of Libel, p. 285) Lord Chief Justice Raymond said, "it had been ruled, that where a master living out of town, and his trade is carried on by his servant, the master shall be chargeable, if his servant publish a libel in his absence."

In *Rex vs. Walter*, (Holt p. 286,) Lord Kenyon said, "he was clearly of opinion that the proprietor of a newspaper was answerable *criminally*, as well as civilly, for the acts of his servants or agents, for misconduct in the conducting of a newspaper. That this was not his opinion only, but that of Lord Hale, Justice Powell, and Mr. Justice Fortescue, all high law authorities, and to which he subscribed. This was the old and received law for above a century, and was not to be broken in upon by any new doctrine upon libels."

In the *King v. Cuthel*, Mr. Holt says (in same page) the same doctrine was holden, & the present noble Judge of the King's bench has repeatedly expressed an opinion in conformity with that of his predecessors on the same subject.

The grounds and reasons on which the Editor of a news paper should be adjudged *criminally* answerable for libels published by his servants in his absence and without his knowledge are very wisely and satisfactorily discussed and proved by Mr Holt in his treatise, pages 46 and 47.

"But it is said Mr Kneeland did recant that article and express his disapprobation of it." I deny it. No such recantation is found in the Investigator of the 27th December; nor in the paper of the 3d of January—on the 8th January he was indicted, and was on trial from the 21st to the 29th January—after VERDICT of GUILTY, then in commenting on his trial he published his disaprobation of the indecency of the article. Where was that disapprobation and disgust during the two weeks after the appearance of the obscene passage? If really so shocking to him as he now pretends, would not some evidence of his pretended disgust exist before he was indicted? There is not a particle, nor was he shocked with it until he was indicted! and this pretended recantation, is it sincere, or made to be read on this appeal? Judge you.

Another minor point has also been set up in defence, arising from the fact that the obscene article on the first page is but the re-echo, and repetition, and republication of another man's language. The law equally condemns such a defence,

Lord Holt decided, that the bare copying out of a libel by one who is neither the contriver nor composer, is highly criminal. In all cases where a man does that act which makes a thing to be what it is, he is, and must be construed to be the doer of that thing. Therefore he held, that writing a copy of a libel, was writing a libel; and if the law were otherwise, a man might write copies and print them with impunity.

(Lord Raym. 417, Salk. 416, 12 Mod. 220, Rex v. Bear.)

If this reasoning be true as to writing a single copy of a libel, it must hold good where a man causes two thousand copies to be printed and distributed in all parts of the land.

If then, Gentlemen, you are satisfied from the law and the evidence that Mr. Kneeland is *criminally* answerable for this publication, should it be proved to be blasphemous, your next inquiry will be as to the character of the publication. Is it in its nature and meaning blasphemous? Does it willfully Blaspheme God's holy name in any of the ways mentioned in the Statute? I confidently assert that no fair man can read the extracted passages either by themselves, without the context, or in connection with the context, and rise from the perusal without a perfect conviction that each of the articles is a manifest violation of the Statute in more ways than one. The glosses and explanations of the ingenious counsel of the defendant cannot cover up or extract the blasphemous meaning they contain. Each of the pieces is offensive and criminal in different particulars. Combined together, they are saturated with the essential poison of Atheism and blasphemy, of infidel scorn and derision, and contumelious reproach of God, the Saviour and the holy Scriptures. I appeal to your decision on this point with unlimited confidence, as I would to the decision of all intelligent and honest men, of men of that best of all sense, common sense.

It is impossible to mistake the meaning of Abner Kneeland upon these subjects. He is too unblushingly explicit; he is too well

known. He has pressed himself and his opinions so much upon the public notice, that he has become a public character—a notorious man. Upon religion and christianity his daring and rancorous hostility, uses no equivocal language. He wishes to be clearly understood,—he writes and speaks to be understood, and nobody mistakes him; if you do, you will be the only men in the community who are blind upon this subject. It would be doing him injustice to adopt the far fetched and studied explanations of his Counsel, because it would be a stain upon his consistency. His society would expel him as an apostate, if he disavowed the sentiments & opinions expressed in this libel. Fanny Wright and Robert Dale Owen would reproach him as a renegade from their ranks, and he would find his infidelity as little profitable as his weak clerical friendship to religion was. I have even heard that he is ambitious of a sort of martyrdom in this cause, and that he wishes to be imprisoned for this libel, to raise sympathy and funds from his punishment. To let his Counsel then successfully fritter away his atheism, blasphemy, and infidelity, would be doing him a disservice, and making him contradict his own publication.

The argument from grammar is wholly against his Counsel's explanation. *A* is the indefinite article, and means ANY ONE of the things spoken of. If he were to say to the Foreman, You believe in a God—he would mean some God, a God of some kind or other; if then without particularizing any particular kind of God, he was to add, *which I do not*, it would be a denial of his belief in any God. A God does not mean any particular God, but a God of some kind or other—and denying a belief in a God, is a proclamation of Atheism, and denying his existence, providence &c.; no language can make it plainer. As to the second and other articles, the history of the Saviour—a fable—miracles, a trick—and no resurrection &c. are not these reproaches!—contumelious reproaches upon Jesus Christ, the Holy Ghost and the Holy Scriptures?

Gentlemen, should you come to the conclusion that this libel is blasphemous—that the publication of it by the defendant was *wilfully blaspheming God's holy name* in any of the ways mentioned in the Statute, or at common law, then I ask you what can hinder your pronouncing a verdict of guilty against him? Do we live under laws, or do we not? If we do, where shall we find those laws but in the places to which I have referred you? Are our laws so solemnly enacted, such flimsy things, that the breath of a lawyer can blow them away just when he pleases, or jurors disregard them whenever they please? If so, we may bid farewell to all liberty, all society, all justice, all order and all government. If things have come to such a pass, your Constitution is a dead letter, your Statute book waste paper, your Courts a mockery, and a judicial trial an useless ceremony. But if we have any law, then gentlemen, the law of the land is before you: the constitutionality of the Statute and the operative force and power of the common law, I hope have been proved to your satisfaction; the blasphemous nature of the publication is evident to every reasonable mind who reads it;

and the testimony is full and complete, that the defendant has made himself criminally answerable for the publication, *partly* as author and wholly as editor and publisher.

What remains then, Gentlemen, but in closing the case, to suggest to you, as I proposed, some considerations why this law, at this time, and in this city should be enforced. Open brazen faced infidelity has not long been among us, nor very successful. It is said even to have been obliged to enlist as assistants in its cause, music and dancing, and by frequent balls and other enticements to collect frequently young men and women together, to instruct them that there is no God or religion to restrain their passions, and no lawfulness in the institution of marriage. I believe also, it is asserted quite publicly, that some secrets of physiology, said to be worth knowing to persons fond of certain pleasures, some checks to a too great increase of population, are now taught to the initiated in the schools of infidelity. I do not assert these things as matters of fact, but as matters of common report, proper to be considered when persons undertake to discuss such extraordinary questions as the expediency of enforcing particular laws.

A long and high wrought description of religious persecution has been detailed to you, in which none of its horrors have been omitted. Let me present to your minds the opposite picture of the mischiefs of infidelity.

Under this indictment I should not probably be allowed to prove them, *though I have the evidence*; they are put to you argumentatively, and not as evidence, just as the learned Counsel of the defendant argumentatively gave those tiresome extracts from history. I have unquestionably a right in urging you to a very careful performance of your duty, to put a case hypothetically to you. I may first remind you it is no new thing to bribe converts with voluptuous pleasures; and by teaching safe and easy modes of gratifying their instincts. The Priests of the Heathen Gods often did this; and infidelity has also the example of Mahomet, who has received so much of the Gentleman's eulogy and admiration. The poisoned Chalice has ever been sweetened at the brim, but the body politic finds misery and death in the contents.

Gentlemen, *Blasphemy is but one part of the system* Fanny Wright has introduced among us. It is but one step, a fatal one indeed, still but one step in the road to ruin. It is to lead the way to atheism. The system is matured and graduated. Atheism is to dethrone the Judge of heaven and earth; a future state of rewards and punishments, is to be described as a nursery bug-bear; moral and religious restraints are to be removed by proclaiming death to be an eternal sleep; marriage to be denounced as an unlawful restraint upon shifting affections, a tyrannical invasion upon the rights of the fickle passion of love, "fond of novelty and studious of change;" and as a wicked and mysterious union cunningly devised to keep property in rich families; illicit sexual intercourse to be encouraged by physiological checks upon conception; the laws of property are to be repealed as restrictions upon "the greatest possible good;" a community of property to be established; all chil-

dren to be supported out of the common fund, that nobody need fear becoming fathers or mothers, and the horrible experiments of "New Harmony" and "Nashoba" though complete failures, these are to be introduced here as fast as possible and to pervade the world. Such are the connected objects, combined into *one system* by the disciples of Robert Owen and Fanny Wright. We know the experiment completely failed, which they superintended in the new Utopias in person. New Harmony very soon wore out its name, and complete discord reigned there. But who can count the number of unhappy victims, whose happiness Robt. Owen and his disciples have sacrificed upon the altars of infidelity? We are convinced the experiment of Abner Kneeland will also fail—it has been tried in all ages of christianity, and has come to naught. Let it but be fairly known, and its FINAL OBJECTS understood, and public scorn and indignation will put it down. But who can tell how much wretchedness will be suffered before his deluded adherents will become sensible of their folly, and the public toleration no longer suffer such enemies to all government to exist in its bosom?

I wish to ask you, Gentlemen, if there would not be grave and pressing reasons to enforce this law,

IF the system of Fanny Wright and Robert Owen has been introduced here, and by providing unrestrained pleasures, by instituting cheap dances, bringing the sexes often together, and teaching safe sins, seeking converts among the poor, among the young and among the lovers of pleasure, with a view first to demoralize them, and then to make them apt instruments to root up the foundations of society, & make all property common, & all women as common as brutes;

IF Robert Owen "the philosopher of circumstances," but more properly called an enthusiast, a mad man, or visionary adventurer, has defined chastity to be "*sexual intercourse with affection*," disregarding the relative situations of the parties, married or single, faithful to one or common to many;

IF he came to America to introduce an "entire new system of society," founded, as he modestly says, on a knowledge discovered by him, and which has been until now *hidden* from man—to wit, that "man is a creature of circumstances, and is neither a proper subject of censure or praise, and cannot become an object of anger or displeasure, and ought not to be rewarded or punished;" (In New Harmony Gazette, Vol. 1. No. 1.)

IF he attempted, and his followers, Jennings, Fanny Wright, Robt. Dale Owen, Knowlton and Abner Kneeland are attempting a REVOLUTION among us: IF he himself in describing his new system, his new views of society and the Revolution he and they want to bring about, has used this language in "an Oration containing a Declaration of Mental Independence, delivered by Robert Owen, at the celebration of the 4th of July 1826"—published in the New Harmony Gazette on the 12th July same year—a performance of which in that Gazette, he modestly says, it is of "more interest to society—be it true or FALSE than any perhaps that has ever been presented to the public at any time in any coun-

try; for it strikes directly at the fundamental principles by which society has heretofore been regulated and governed."—

If in that Oration, he says :

‘ But my friends, knowing, as I do, the immeasurable magnitude of the good which this Mental Revolution will effect and permanently secure for human nature through all ages—I deem the continued existence, a little longer here, of a few individuals to be no consideration whatever in comparison with its attainment ; and, therefore as I cannot know the present state of *your* minds, and as the continuance of my life, at my age, is very uncertain, I have calmly and deliberately determined, upon this eventful and auspicious occasion, to break asunder the remaining mental bonds which for so many ages have grievously afflicted our nature, and, by so doing, to give forever FULL FREEDOM TO THE HUMAN MIND.

‘ Upon an experience, then, of nearly forty years, which owing to a very peculiar combination of circumstances, has been more varied, extended and singular, than perhaps has ever fallen to the lot of any one man, and, during which period, my mind was continually occupied in tracing the cause of each human misery that came before me, to its true origin ; I now *Declare* to you and to the world, that *Man, up to this hour, has been, in all parts of the earth, a slave to a TRINITY of the most monstrous evils that could be combined to inflict mental and physical evil upon his whole race.*

‘ I refer to *Private, or Individual Property—absurd and irrational Systems of Religion—and Marriage, founded on Individual property combined with some one of these irrational systems of religion.*

‘ It is difficult to say which of these grand sources of all crime ought to be placed first or last ; for they are so intimately interlinked and woven together by time, that they cannot be separated without being destroyed : each one is necessary to the support of the other two. This formidable Trinity, compounded of Ignorance, Superstition and Hypocrisy, is the only Demon, or Devil, that ever has, or, most likely, ever will torment the human race. It is well calculated, in all its consequences, to produce the utmost misery on the mind and body of man of which his nature is susceptible. The division of property among individuals prepared the seeds, cultivated the growth, and brought to maturity all the evils of poverty and riches existing among a people at the same time ; the industrious experiencing privations and the idle being overwhelmed and injured by wealth.

‘ Religion, or Superstition—for all religions have proved themselves to be Superstitions—by destroying the judgment, irrationalized all the mental faculties of man, and made him the most abject slave, through the fear of nonentities, created solely by his own disordered imagination. Superstition forced him to believe, or to say that he believed, that a Being existed who possessed all power, wisdom and goodness—that he could do, and that he did, everything—and yet, that evil and misery superabound ; and that this Being, who makes and does all things, is not the direct or indirect author of evil or misery. Such is the foundation on which all the mysteries and ravings of Superstition are erected in all parts of the world. Its inconsistency and inconceivable folly have been such as to keep the world in continual wars, and massacres, to create private divisions, leading to every imaginable evil ; and it is probable that Superstition has caused more than its third of the crimes and sufferings of the human race.

‘ The forms and ceremonies of Marriage, as they have been hitherto generally performed, and afterwards supported, make it almost certain, that they were contrived and forced upon the people at the same period that property was first divided among a few leading individuals, and Superstition was invented ; this being the only device that could be introduced to permit them to retain their division of the public spoils, and create to themselves an aristocracy of wealth, of power, and of learning.

‘ To enable them to keep their children apart from the multitude who were to be kept in poverty, in ignorance, and consequently without power—and to monopolize all wealth and power and learning to themselves—

some such contrivance as marriage, with mysterious forms and ceremonies, to hide their real intentions from the ignorant, was absolutely necessary, that they might, through the influence of their wealth, learning and power, select the most beautiful and desirable women from among all the people—and thus enslave and make them, in fact, a part of their private property.’

‘This was the commencement of that system which led to such endless crimes and miseries and degradation of the human faculties, by tempting the inexperienced to barter their feelings and affections for wealth, trappings, and power ; when too late for their happiness, they discover they have been deceived, and that wealth, learning and power, can make no amends for the want of those natural feelings and affections, in the union of which, all feel the present happiness of life to consist.’

\* \* \* \* \*

‘The revolution then, to be now effected, is the DESTRUCTION of this HYDRA OF EVILS—in order that the many may be no longer poor, wretched beings—dependent on the wealthy and powerful few ; that man may be no longer a superstitious idiot, continually dying from the futile fear of death ; that he may no longer unite himself to the other sex from any mercenary or superstitious motives, nor promise and pretend to do that which it depends not on himself to perform.

‘Upon the experience of a life devoted to the investigation of those momentous subjects, I fearlessly now declare to you, from a conviction, as strong as conviction can exist in the human mind, that this compound of ignorance and fraud, *is the real and only cause of all the crime, and misery arising from crime, which can be found in human society.*’

\* \* \* \* \*

‘For nearly forty years have I been employed, heart and soul, day by day, almost without ceasing, in preparing the means and arranging the circumstances, to enable me to give the death-blow to the tyranny and despotism, which, for unnumbered ages past, have held the human mind spell-bound, in chains and fetters of such mysterious forms and shapes, that no mortal hand dared approach to set the prisoner free. Nor has the fulness of time, for the accomplishment of this great event, been completed until within this hour—and such has been the extraordinary course of events, that the Declaration of Political Independence, in 1776, has produced its counterpart, the DECLARATION OF MENTAL INDEPENDENCE in 1826—the latter just half a century from the former.

‘Rejoice with me, my friends, that your Mental Independence rests now as secure as your Political Independence ; for the overwhelming power of TRUTH over ERROR is such, that as soon as arrangements can be formed to admit, of the full developement of Truth to the world, and it is once publicly promulgated, no art, or falsehood, or force, can ever afterwards return it back into forgetfulness, or unteach the truths which it has taught.

‘Under the circumstances in which this Mental Revolution has been made, no human power can undo, or render nugatory, that which has now been done.

‘This truth has passed from me, beyond the possibility of recall : it has been already received into your minds ; speedily it will be heard throughout America, and from thence it will pass North and South, East and West, as far as language is known—and almost as fast as it shall be conveyed, human nature will recognize and receive it. In countries, in which ignorance and despotism hold their sway over the multitude, arts will be used to keep it from being heard among them : but neither armies, nor barriers of any kind, can now prevent a great and important truth from finding its way, by some means or another, into the darkest recesses of error and deception.

‘Rejoice, then, with me, my friends, that this light is now set upon a hill ; for it will increase daily, more and more, until it shall be seen, felt, and understood, by all the nations of the earth.’

IF he came to America to make the people believe there was no God, no accountability, no punishment or rewards—"to make them throw in the fruits of their industry into a common fund for the support of the idle and vicious—to abandon the pleasures of home for the promiscuous intercourse of the sexes, and to be guided by the ravings of such a simple and enthusiastic foreigner;"

IF Robert Dale Owen \*addresses young men and women with whom the law in the members is more powerful than that in the Statute book, whose feelings are still unblunted, and whose sympathies still warm, and tells them § "that the pleasures derived from the (reproductive) instinct, independant of, and totally distinct from its ultimate object, the reproduction of our race, is good, proper, worth securing and enjoying," and says his father's definition of chastity is an excellent one, "sexual intercourse with affection," though at the same time he acknowledges §§ "human affections are mutable,"

IF R. D. Owen has published a book, and six editions of it to prove to young men and women that "men and women may have a perfect control over this instinct of sexual intercourse, and that men and women may without any injury to health, or the slightest *violence* done to the *moral* feelings and with but small diminutions of the pleasures which accompanies the gratifications of the instinct, refrain at will *from becoming parents*†—If he proclaims that person \*\* "to be an exceedingly great benefactor, who can teach man how to limit his powers of reproduction without abridging his enjoyments;" and after disclosing certain "checks" to young men and women, declares his essays to be "an \* enlightened and very *practical* view of the subject," and that it is "the most useful work that has made its appearance since the publication of Paine's "Common sense:"\*\*\*

IF Fanny Wright has proclaimed clearly her principles at Nashoba, where she also attempted a New Harmony which also completely failed: IF she encourages and inculcates a new system of society like that described by Robert Owen: IF in her explanatory notes, respecting the nature and objects of the Institution of Nashoba, and of the principles on which it is founded, she has said:

'It is declared, in the deed of the founder, that no individual can be received as a member, but after a noviciate of six months, and then only by a *unanimous* vote of the resident proprietors. It is also provided that the admission of a husband shall not involve that of a wife, nor the admission of a wife that of a husband, nor the admission of either or both of the parents that of children *above the age* of fourteen. Each individual must pass through a separate trial, and be received or rejected on the strength of his or her merits or demerits. And, as in the reception of members the individual character is the only one recognized, so by the principle of the society, that character can never be forfeited. The *marriage law*, existing without the pale of the institution, *is of no force within that pale*. No wo-

\*Moral Phsyiology, page 8.  
\*\*Page 74.

\*Page 75.

§Page 17.  
\*\*Page 76.

§§Page 53.

†Page 60.

man can forfeit her individual rights or independent existence, and no man assert over her any rights or power whatsoever beyond what he may exercise over her free and voluntary affections. Nor, on the other hand may any woman assert claims to the *society or peculiar protection of any individual of the other sex, beyond what mutual inclination dictates and sanctions*; while, to every individual member of either sex, is secured the *protection and friendly aid of all*.

'The tyranny usurped by the matrimonial law, over the most sacred of the human affections, can perhaps only be equalled by that of the unjust public opinion, which so frequently stamps with infamy, or condemns to martyrdom, the best grounded and most generous attachments which ever did honor to the human heart, simply because unlegalized by human ceremonies equally idle and offensive in the *form* and *mischievous in their tendency*.'

'Let us not attach ideas of purity to monastic chastity, impossible to man or woman without consequences fraught with evil, nor ideas of vice to connections formed under the auspices of kind feeling! Let us inquire, not if a mother be a wife or a father a husband, but if parents can supply, to the creatures they have brought into being, all things requisite to make existence a blessing. Let the force of public opinion be brought against the thoughtless ignorance or cruel selfishness which, either with or without the sanction of a legal or religious permit, so frequently multiplies offspring beyond the resources of the parents.'

If she has declared the dangerous principle that in the consequences of our actions only, consists their virtue or vice: If she has used these words—

'Let us check the force of passions, as well as their precocity, not by the idle terror of imaginary crime in the desire itself, but by the just and benevolent apprehension of bringing into existence unhappy or imperfect beings! Let us teach the young mind to reason, and the young heart to feel: and, instead of shrouding our own bodies, wants, desires, senses, affections, and faculties in mystery, let us court inquiry, and show, that acquaintance with our own nature can alone guide us to *judicious practice, and that in the consequence of human actions exists the only true test of their virtue or their vice*.'

IF Dr. Knowlton, taking Robert Dale Owen's "Moral Physiology" for a basis, comes out far more boldly, and with far less decency, speaking plainly what the other said covertly, and instead of *one* "CHECK" tells young men and women of *Four*, by which they can have intercourse with safety and without discovery, and gives a COMPLETE RECIPE how the trade of a Strumpet may be carried on without its inconveniences or dangers:

IF in his preface to what he calls, by a strange misnomer, "FRUITS of Philosophy," (which seem calculated to *prevent the increase of the human race*,) he declares that "*philanthropists of first rate moral character, in different parts of the world, have for years been endeavouring to obtain and disseminate a knowledge of the means whereby men and women may refrain at will from becoming parents, without even a partial sacrifice of the pleasure which attends the gratification of the re-productive instinct*;

IF, in Page 12, he says, "Man by nature is endowed with the talent of devising means to remedy or prevent the evils that are liable to arise from gratifying our appetites: and it is as much the DUTY of the physician to inform mankind of the means of preventing the evils that are liable to arise *from gratifying the re-productive instinct*, as it is to inform them how to keep clear of the gout or the dyspepsia. Let not the cold ascetic say, we ought not to gratify our appetites any farther than is *necessary* to maintain health and to perpetuate the species. Mankind *will not* so abstain, and if means to prevent the evils which may arise from a *farther gratification* can be devised, they OUGHT NOT.—Heaven has not only given us the capacity of greater enjoyment, but talent of devising means to prevent the evils that are liable to arise therefrom: and it becomes us "with thanksgiving" TO MAKE THE MOST OF THEM."—

IF his Chapter first is entitled, "Showing how desirable it is, both in a *political* and SOCIAL point of view, for mankind to be able to limit at will, the number of their offspring, *without sacrificing the pleasure* that attends the gratification of the re-productive instinct."—

IF Chapter Second contains twenty pages of minute "Physiology of the Female Genital System," with the description of the various theories of conception;—

IF chapter third is entitled "Some other things that ought to be known:"—

And, IF, lastly, chapter fourth "*Of the Checks*" shows how the instinct can be gratified, and the *natural consequences* prevented; in other words, how lewdness and prostitution may be safely practised, and young men and women indulge their passions whenever they please and refrain *at will* from becoming parents;—

IF ABNER KNEELAND has undertaken in this district to be LIEUTENANT GENERAL of Robert Owen and Fanny Wright,—to read their Books to his audience—to preach their doctrines, and promote their system of morals—to disseminate in his "Investigator" their Atheism, Infidelity, and revolutionary and ruinous principles;

IF he *boldly* advertises *to be sold by himself* these most infamous "FRUITS OF PHILOSOPHY," and even in the EDITORIAL department of *this very Newspaper* of

the 20th December, in which this Blasphemous Libel is published, tells the world he has some copies on hand for sale, RETURNED BY HIS AGENTS, (who, it seems, could not, or would not sell them any longer.)\*

IF the young and the warm-blooded, and the lascivious and the profligate, among all classes and sexes, are attracted by MUSIC and DANCING,\*\* and such preaching and principles, and the offer of such books, to assemble often together; and by ribaldry, and scorn, and derision, to scoff at all religion, and especially at the HOLY SCRIPTURES, and to ridicule marriage as a burthensome and silly ceremony.—

IF, in a Book, which he *unblushingly* has given me leave to read from, published by himself, and under his own name, he says, in Page 194;

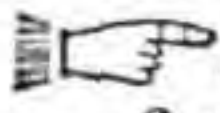
“IN my last I proposed some additional queries in order to arrive, if possible at some correct principles on which human society should be formed, so as to produce the greatest quantum of human happiness; and come to the conclusion that it should be on the principle of perfect equality as to rights and privileges, totally regardless of sex; and I will now go one step further, and say, totally regardless of color.”

\* \* \* \* \*

“We have now, perhaps, sufficiently matured the subject, so as to be prepared to propose and answer the question, “*What laws would you have in relation to matrimony?*” To which I answer.—Marriage is a civil contract between the parties, which stands upon the same basis of all other civil contracts, which are binding as long as the parties mutually agree, and no longer. The parties who make the contract, can dissolve it at pleasure, or by mutual consent. But if the parties cannot agree to separate by mutual consent, then it is necessary to call in a third party, one or more, as referees or arbitrators, not to bind the parties together; for in relation to matrimony, where the ties of affection do not bind them,

---

\*In the Editorial department of the Investigator of the same 20th December are these words:

“ FRUITS OF PHILOSOPHY.—We have a few more copies of this work, being returned by our agents, for sale at this office.”

\*\*I have received from one of Mr. Kneeland's society, a printed Handbill entitled “Rules and Regulations. Free Enquirer's Assemblies. Federal Street Theatre.”

No. 2, is in these words:—Ladies will be admitted free; but no Lady will be admitted who is unattended by a Gentleman, *except-Members of the Society*; and they are requested to always come *with a male attendant if possible*.

No. 5, in these words:—*Every Gentleman is requested to bring a Lady of his acquaintance with him*, as it will be more agreeable to dance with an acquaintance than with a stranger. Gentlemen will not be permitted to dance together.

Besides these *printed* regulations, I have been informed there are beds in the Dressing Rooms at the Federal Street Theatre.

this is impossible ; but to say on what terms they shall separate in regard not only to the property, but also to the maintenance and education of the children, if there be any ; which the parties being satisfied therewith, may and ought to be final ; but should either or both of the parties be dissatisfied, then it may be carried to the court on the complaint of either party and followed up to a final judgement or decision.”

\* \* \* \* \*

“I would have no one, therefore, marry for life, in the first instance, nor for any certain period of time.”

\* \* \* \* \*

“But it may be said that the principles laid down above, would give the public immense trouble in the maintenance and education of children. Parents, when they separated, might be disposed to abandon their children. Constituted as society now is, there might be some difficulty on this head; though it is doubted whether there would be any greater than there is at present. If parents lose their affection for each other, it does not necessarily follow that they will also lose it for their children ; and if not, they will mutually try to do the best they can for them. But, be not alarmed, the above principles are not intended for the present state of society at all, and not until all children are provided for by the public, (who are not sufficiently provided for by their parents) both as it regards their maintenance and education; so that, whether their parents should be living or dead, whether they lived together or lived separately, no children should be allowed to be in want, or to grow up in ignorance ; but well provided for as long as there should be property enough in the commonwealth to maintain and educate them. Let all parents have the privilege of maintaining and educating their own children, in their own way if they will ; but if they will not, or even *do* not, they should be considered culpable, and no longer worthy of being guardians of their own children. All this I would do by a direct tax on property; but if the public opinion should be in favour of a *parent* tax, in addition to the *public* tax on property, for the purpose of maintaining and educating all the children in the state, it would not be very objectionable, on condition that those parents who should maintain and educate their own children, free of expense to the state, should be exonerated from paying the parent tax; but not the property tax; for at all events all the children which should be born, should be well maintained, and well educated. But it should also be observed that, when schools are, what they ought to be, schools of industry as well as of science, there will be but very little public expense for schools, except for infant schools, because the scholars will nearly support themselves by their own labour.”

If these things be so, who will not say that it is the bounden duty of every Father, Husband and Citizen to use all lawful means for the preservation of public morals, decency, and happiness? Who will say that Courts of Justice ought not to enforce the law against disseminating the moral and political poison of Atheism and blasphemy? and proclaim their disgust at a system combining blasphemy, atheism, infidelity, adultery, lewdness, removing all moral and religious and legal checks upon human depravity, and leading to a community of property, and striking directly at the foundation of civil society?

Gentlemen,—Prosecutions against Blasphemy at this time, in this country, are not merely the causes in which God and Religion only are concerned: they are the causes of human society against the boldest and most wicked disorganizers that ever attempted its destruction; and nothing at the present time is more astonishing in this age of strange things, than that any decent men, or any chaste women can attach themselves to a party holding such principles.

Men now indeed are prone to move in masses; a spirit of clanship keeps them together; this may somewhat account for some zeal and partizan activity. But the *great bribe* is the removal of moral restraint, bringing the sexes together by music and dancing, and showing they may sin and escape the consequences—and these are merely introductory to FUTURE PROJECTS in Robt. Owen's new system, and Fanny Wright's detestable schemes.

Now if these be proper and just statements, can any good reason exist why this law should not at this time and in this place be enforced? Its execution is intrusted this day to YOU the guardians of the public weal. It is in vain to have law and evidence and Courts, if Jurors will not do their duty, if they act arbitrarily, from prejudice or partiality. What would you say if a juror in a civil suit would not find a verdict for you for a clearly proved debt, because he was a friend to your debtor, or to his bail or to his counsel? I cannot think YOU will hold back so. Many eyes are on you in the world, as well as the eye of that Great Supreme Judge who is over all, the searcher of consciences, who knows your secret motives. Disgrace not yourselves, nor our Commonwealth by retreating from your duty. Present the barrier of your verdict against all inroads upon decency, property, order, chastity, good morals, christian doctrines and principles. Let it not be said that you have overstepped your powers and undertaken to repeal a law of the State, and that you have done what you could to give a death blow to our Constitution and Statute Book. Let it not be proclaimed abroad, that infidelity and atheism and blasphemy have found a resting place and safe nest in Boston, where they can multiply their progeny in peace and plenty, and make havoc of the faith and happiness of all whom they can poison.

Much, much depends on your decision, this day. I beseech you to awake to your awful responsibility to God and man, and so return a true verdict according to the evidence given you in this earthly tribunal, as you expect an impartial judgment yourselves upon your own motives and conduct at that tribunal before which all men shall appear, and from which no secret can be hid.

Fear not that closing remark of the Defendant's Counsel—that if Abner Kneeland is found guilty, the Constitution is sacrificed—no such thing—'tis mere Declamation and Rhapsody to say so, & it was said in a style that would suit a caucus more than a Court. Time and again has this Statute been enforced and the Constitution is alive and vigorous and well as ever; in Lincoln Co., in Middlesex Co., in Bristol Co. and others, at intervals, showing the law is neither a dead letter nor obsolete. Rather Gentlemen, will the Constitution be pierced and destroyed by an acquittal. Could I scream as loud, I might with far more reason exclaim at the top of my lungs, acquit Abner Kneeland on constitutional grounds and you destroy your Constitution. If there is no law against his blasphemy, there is no law against crime. We have no laws at all—we are in a state of nature, without law and without Government.—Punish no more thieves, rogues and murderers. Let all libellers

escape with impunity, for your Laws and Constitution are a dead letter if Jurors will disregard them.

But the defendant will not permit your decision against him to be final. He stands in no danger by your verdict, as his Counsel has told you, he will carry the question of constitutionality to the whole Bench of Judges, where all constitutional questions ought to be carried—more yet—if the whole Bench of Massachusetts Justices decide, as I have no doubt they will, that the Statute is constitutional, he will not even then submit, and we are threatened with a writ of error to the Supreme Court of the United States, where it is to be decided in the face of the nation, and there too, I doubt not, the defendant would meet with a defeat, upon one of two grounds, either that no such Writ of Error upon the subject could lawfully be brought before the Court of the United States, or if they had jurisdiction of the matter, the Massachusetts Statute would be decreed constitutional.

I forebore, Gentlemen, to waste your time in a reply to what was said about the Constitution of the United States establishing no Religion: the answer seemed so obvious to every one.

The General Government is a Government of limited powers. What the States did not grant, they retained. The General Government is a Government of certain specified powers, for certain general purposes, the purposes of the nation at large. The people in the several States have their own Constitution and Legislatures, the Constitution and laws of the United States cannot take away the independence of the States nor their right to regulate their own domestic concerns; nor their right to pass their own laws. There is no law of the United States against murder committed in the territories of any of the States, nor of stealing, nor of perjury in the State Courts, &c. and of course none against Blasphemy, or breach of the Lord's Day, &c. Congress have nothing to do with such things committed within the territory of a State, nor with our internal laws. And none of the provisions of the Constitution of the United States and none of the laws of Congress can abrogate the Constitution of the Sovereign People of this Commonwealth. The Argument from the Naturalization law is equally futile—It is this. Congress has power to establish a uniform system of naturalization. A Mahometan, a Gentoo, a Jew may become a naturalized citizen. Therefore says the defendant's counsel, he may bring his religion with him and practise that here. This is a non-sequitur. There is a manifest fallacy in this argument, and it proves too much. It is a part of Mahomet's system that women have no souls—that a man may have a plurality of wives.—The argument then proves that a Turk may come here and be naturalized and keep his seraglio &c., and the Jews enforce all the Mosaic ritual, and the practice of retaliation, an eye for an eye, a tooth for a tooth. So the car of Juggernaut might be drawn through our cities and crush thousands of human beings to death. The murder of parents when they become old and burthensome, is a part of the religion of the inhabitants residing on

the Banks of the Ganges, and parricide therefore would be no crime in our land. And women be religiously burnt on the funeral pile of their husbands.—It is gravely said that the law of Massachusetts against Blasphemy is unconstitutional, because the naturalization laws of the United States are so to be construed as to admit the inhabitants of all countries on the Globe to dwell here, and bring with them their Gods, their religious customs and practises, their insults, abuses and persecutions of Christians. Can this be so? The very statement of the argument shows its absurdity. If they become citizens, then like other citizens they must submit to the standing laws of the States where they reside.

Gentlemen—I beseech you regard our laws—Follow the advice of a late eminent and excellent judge, now in his grave, one who best knew the duties of a Jury from the experience of a long life, constant studies of the law, and more than twenty years experience as a Judge in the highest judicial tribunal of our state. 14 Mass. Reports, p. 345, before quoted. It is law of the land declared by its Supreme Court.

All honest and fair Jurors, who look only to their duty, who discard prejudices and partiality, will take that law for their guide, and leave constitutional questions to the decision of the Court. They will presume the legislature to be a proper judge of its constitutional powers, and that a law is constitutional, until the contrary is proved beyond a doubt. The burthen of proof is on the objector.

And now Gentlemen, I leave you to do your duty. I hope I have done mine. If open, gross, palpable and indecent blasphemy, and all the consequence of the Fanny Wright system—atheism, community of property, unlimited lasciviousness, adultery, and the thousand evils of infidelity, receive no check, the reproach will not fall on me. If marriages are dissolved, prostitution made easy and safe, moral and religious restraints removed, property invaded, and the foundations of society broken up, and property made common, and universal mischief and misery ensue, the fault will not lie on me. But you must answer for your part in bringing up that train of incalculable evils, which may be visited on your posterity to the third and fourth generations. You must answer for it to your fellow-citizens, your wives, children, and relations, to mankind, to your country, and to your God. Look then with care, Gentlemen, to your great responsibility in this trial, to your duty and to your verdict. Take care that this day you offend not God, nor injure man, that you violate not the law, and the constitution; that your children rise not up in judgment against you, and that you avoid the maledictions of the world.

Court then adjourned.—Next morning Judge Putnam charged the Jury. His charge is published in the Daily Advocate of May 21st, 1834.

---

The Jury did not all agree.—Eleven of them agreed on a Verdict of **GUILTY** in ten minutes. A personal and political friend of the Defendant's Counsel, was the dissentient Juror. He did not regularly belong on that Jury, and was put there by means of Mr. Dunlap's exertions.

The dissentient Juror has published a statement in relation to his conduct, in the Morning Post, of May 26, 1834.

The cause is continued to be put to a new Jury at next November Term. Mr. Dunlap has been heard to say, that he had nothing more to do with it. It is published by the Defendant that he means to make his own defence at next trial.

Mr. Kneeland has printed and circulated as widely as he could, a long introduction to Mr. Dunlap's Speech in his Defence, and also that **SPEECH**. If the public mind is at all influenced by the arguments used by Counsel, he made and issued the *first* publication, and has no right to complain that the antidote has been furnished, that the public might see the other side of the question also.

*C. K. L. E. B.*