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the effects on board of the Ann were less than $4000. If the policy had been on goods on board *any American vessel* from Havana to the United States, as the insured had made no appropriation he might, according to the doctrine in Kewley v. Ryan, (2 H. Bl. 343) have had a right to apply it to either vessel. He might, as one vessel only would be within the policy, have selected the Friendship, and as the loss was more than 5 per cent. of the effects on board of her, might have recovered as for a partial loss. If, however, the policy had been on any American vessel or *vessels*, so as to have covered all three vessels, I should have thought that in case of loss, the amount ought to exceed 5 per cent. of the value of the entire effects in all the vessels to have entitled the insured to recover. But the terms of the present policy seem confined to the *Ann* or any *other American vessel*, and as effects were on board of her which might be covered by the policy, she alone is included, and the effects on board the Friendship and the Hav. Packet were not within the policy, and consequently there can be no partial loss recovered on account of the damage sustained by the effects in the Friendship. S.

1811.

ART. V.—CHRISTIANITY A PART OF THE COMMON LAW.

MR. JEFFERSON, in a letter to Major Cartwright, recently published, insists that the maxim, that Christianity is a part of the common law, has no foundation in the cases cited to support it, they all referring to the year book 34 Henry 6, 38, 40; which he says has no such meaning.

The substance of the case in 34 Henry 6, 38, 40, is this. It was a quare impedit against the bishop and others; and the bishop pleaded that the church was in litigation between the plaintiff and his co-defendant, as to the right of patronage. The argument in one part of the case by counsel was that every advowson and right of patronage depended upon *both laws*, viz. the *law of the church* and the *common law;* for every presentment commenced at the common law and took effect by the law

of the church, as to the ability or non-ability of the clerk presented or his being criminal. And it was said by *Ashton*, that if the bishop should refuse the clerk on account of alleged inability, and a quare impedit was brought, and the bishop excused himself on that account, and the parties were at issue upon the fact of ability, another judge should decide that, viz. the metropolitan. But that was denied by *Danby*, who said it should be tried by the jury. *Ashton*, however, persisted in his opinion, arguing that the right of advowson must be tried by both laws, and that before judgment was given, knowledge ought to be had of the ecclesiastical law. *Prisot* then said: 'A tiels leys, que eux de sainte Esglise ont *en auncien Scripture* convenit pur nous a doner credence, quia ceo est comen ley, sur quel toutes maners leys sont fondues; et, auxi, sir, nous sumus obliges de conustre leur ley de sainte Esglise; et semble, ils sount obliges de conustre notre ley.' The literal translation is, 'As to those laws, which those of holy church have in ancient scripture, it behoves us to give them credence, for this is common law, upon which all manner of laws are founded; and thus, sir, we are obliged to take notice of their law of holy church; and it seems they are obliged to take notice of our law.

Mr. Jefferson supposes that the words 'auncien scripture' do not refer to the Holy Scriptures or Bible, but to *ancient writings*, or the written code of the church.

But if this be so, how could *Prisot* have said that they were common law, *upon which all manner of laws are founded?* Do not these words suppose that he was speaking of some superior law, having a foundation in nature or the Divine appointment, and not merely a positive ancient code of the church?

Mr. Jefferson asserts, that in subsequent cases, which he refers to, the expression has been constantly understood as referring to the Holy Scriptures; but he thinks it a mistake of Prisot's meaning. Now it is some argument in favor of the common interpretation, that it has always been cited as clear — Mr. J.'s interpretation is novel.

This case is cited in Brook's Abridg. Title Quare Impedit pl. 12, and in Fitzherbert's Abridg. s. t. 89; but no notice is taken of Prisot's saying.

Mr. Jefferson quotes sundry cases where this saying has been relied on in proof of the maxim that Christianity is a part of the common law.

Thus in Taylor's case, 1 Vent. 293, indictment for blasphemous words, *Hale*, C. J. said, Such blasphemous words are not only an offence against God and religion, but a crime against the laws and government, and therefore punishable in this court, &c.; and *Christianity is a part of the laws of England;* and therefore to reproach the Christian religion is to speak in subversion of the law. In the same case in 3 Keble, 607, Hale, C. J. is reported to have said, 'Religion is a part of the law itself, therefore injuries to God are as punishable as to the King or any common power. The case of 34 Hen. 6, 38, 40, is not here cited by the court as a foundation of their opinion. But it proceeds upon a general principle.

So in Rex *v.* Woolston, 2 Strange R. 834, S. C. Fitzgibb. 64, the court said they could not suffer it to be debated whether to write against Christianity in general was not an offence punishable in the temporal courts, at common law, it having been settled so to be in Taylor's case, 1 Vent. 293, and Rex *v.* Hall, 1 Strange R. 416. No reference was here made to the case in 34 Hen. 6.

A reference is made by Mr. J. to Sheppard's Abridgment, title Religion; but the only position there found is, 'that to such laws as have warrant in holy Scripture our law giveth credence;' and laws made against the known law of God are void: and for these positions he cites, among others, the case of 34 Hen. 6, 40.

But independently of any weight in any of these authorities, can any man seriously doubt, that Christianity is recognised as *true*, as a revelation, by the law of England, that is, by the common law? What becomes of her whole ecclesiastical establishment and the legal rights growing out of it on any other supposition? What of her test acts, and acts perpetually referring to it, as a divine system, obligatory upon all? Is not the reviling of any establishment, created and supported by the public law, held a libel by the common law? J. S.

1824.

See Rex *v.* Williams, Holt's Law of Libel, p. 69, note (e). Smith *v.* Sparrow, 4 Bing. R. 84, and particularly what is said by Mr. Justice Park in page 88. Omichand *v.* Barker, Willes R. 548.