

each man's right *et sentire quæ velit, et quæ sentiat dicere*; and that the law oversteps its rightful limits when it annexes a punishment to profane speech. A claim is put forward, which I will state in the precise words of one who has made himself most conspicuous in denouncing this portion of our laws. Mr. Buckle, the well-known author of what at first appeared to be a promising treatise on "Civilisation in England," put forward this proposition:—"It should be clearly understood that every man has an absolute and irrefragable right to treat any doctrine as he thinks proper; either to argue against it, or to ridicule it. If his arguments are wrong, he can be refuted; if his ridicule is foolish, he can be out-ridiculed." "Every species of attack is legitimate." Again: "Any punishment inflicted for the use of language which does not tend to break the public peace, and which is neither seditious in reference to the State, nor libellous in reference to individuals," is "simply a wanton cruelty." And once more, he puts the proposition in the form of a question, thus:—"Is it proper that law, or public opinion, should discourage an individual from publishing sentiments which are hostile to the prevailing notions, and are considered by the rest of society to be false and mischievous?" In other words, our objectors say, *Deorum injuriæ, diis curæ!*

Here, then, is the problem which it is my object to submit for your consideration. Here is the issue which remains to be decided by the educated mind of the country, and which it especially befits us, as jurists, to aid in the determination of! The protest against the existing law is made not by Mr. Buckle only, but also by a writer of even higher repute and consideration—Mr. John Stuart Mill, whom, in fact, as respects this question, Mr. Buckle only followed in order of time; but whom he has far outstripped—if I ought not rather to say, contrasted with himself—in the intemperance of the remarks which he has published on the subject, and the unjustifiable mode in which, in his eagerness to heap abuse upon the law, personal character has been traduced by him.

It is wholly impossible, in a discussion of this subject, to omit noticing the particular case which has given this question more immediate prominence among the public disputations of the day. It is invested with special interest to us, as lawyers, because it is the first occasion in the long period which has elapsed since society assumed its present settled and refined condition, that the administration of justice, by one of the first class of judicial functionaries, has been openly alleged, by persons of education, to have been designedly perverted to the purposes of oppression. It is also invested with interest for every one who is concerned for the character and honour of our highest literature; in that we find, how even a cultivated intellect may surrender itself to prejudices, under the influence of which it may be guilty of the breach of every imaginable literary propriety, and of even the commonest decencies of social intercourse.

[The learned reader here detailed the particulars of Pooley's case, and the attack of Mr. Buckle on Sir John Coleridge, in reference to it; animadverting, in strong terms, on the spirit manifested by Mr. Buckle in that attack, and the mode in which he had conducted that controversy.]

Has then the law a right to restrain offensive attacks on religion.

"No!" says the lover of liberty; "or," he says, "if you interdict the use of such weapons, interdict them equally on both sides. Restrain the employment of vindictive, sarcasm, contumely, and other intemperate means against irreligious opinions, if you forbid their use in opposition to the prevailing that is, the Christian opinion." This ground is taken by Mr. Mill and others. Mr. Mill says, "If it were necessary to choose, there would be much more need to discourage offensive attacks on infidelity than on religion. It is, however, obvious that law and authority have no business with restraining either." So, it is asked by an anonymous writer, as to "those

who would punish blasphemy because it is offensive to believers, will they similarly punish believers for language offensive to those of other creeds, with equal virulence and wilfulness?"

Now it would be mere dissimulation, a mere evasion were I to profess myself satisfied with the alternative offered of an equality of treatment to be extended to the defamers of Christianity, and the supposed defamers of unbelief. I shall not shelter myself under any such compromise! Part of my argument, indeed, will be, that there is nothing in unbelief to defame! It is plausible, but utterly false (as I shall hope to show), to assume that there is room, or material, here for any bargain. The man who rejects the religion has nothing to offer which can entitle him to put the Christian under terms. There is no subject matter for an exchange! The offence (supposing the fact of an offence to be established), is all on one side. How can any one defame infidelity, which, in its very nature, abjures all claim to veneration, and which says, "Let us eat and drink for to-morrow we die!" Its own description of itself confesses that there is no sacredness in it to desecrate. It may be arguable theoretically whether Christianity is or is not true, and the unbeliever is not sought to be precluded from denying its truth; but if I establish, as I hope to do, that Christianity may, for certain limited purposes, be treated by the State as it would be were it certainly known to be true, then we must take its own description of itself, and, according to that description, it offers sanctions with which disbelief has nothing to compare,—against which it has nothing to set-off; sanctions which are of such a nature that an attack upon them may be indecent—may be profane; sanctions, moreover, which being profaned, there is no longer even equality (as I shall show), for Christian opinion (that equality which the unbeliever himself insists on), but a gross inequality, to the unfair hindrance and disparagement of those opinions.

The arguments which establish, as I conceive, the right to visit blasphemy with legal penalties, are of two kinds. One class of arguments is derived from the essential nature of Christian doctrines, and the intrinsic difference between their sanctions and those of infidelity (if the latter can be said to claim any sanctions). In other words, from the very nature and character of Christian opinions, they occupy, in regard to protection from the State, a preferable position to disbelief. The other line of argument is either historical, or bases itself on existing facts.\*

Before submitting to you the arguments that have occurred to me, there are certain admissions which may be most readily and unhesitatingly made, and which will assist in clearing the ground of the controversy.

Thus, I need hardly say, I admit that a human being is not accountable to others for his religious belief. I admit that, as between man and man, or between man and society, each individual for himself is entitled to "absolute freedom of opinion and sentiment on all subjects, practical or speculative, scientific, moral, or theological." I admit that this complete liberty belongs to all, whether Christians or not. I admit that the "only part of the conduct of any one, for which he is amenable to society, is that which concerns others."

The right which the law asserts, therefore, is not a right to persecute any opinion. Beyond even this, it is not a right to enforce any opinion. It is not a right to prohibit any opinion. It is not even a right to prohibit the publication of any opinion as an opinion, provided there be decorum and respect. It should, therefore, be clearly understood that it is altogether inappropriate to adduce in the present argument such examples as that of the Mussulman not permitting pork to be eaten, or the Hindoo beef; Spain prohibiting Protestant worship or a married clergy; the Persians forbidding temples; the Puritans

\* I need hardly say that in using the term "infidel" or "infidelity," I adopt the term merely as a convenient form of expression, without the slightest intention of inflaming prejudices, or affixing any stigma.