

BLASPHEMY AND BLASPHEMOUS LIBELS.

that the mere denial of the truth of the Christian religion is not enough to constitute the offence of blasphemy. But no doubt, whether we like it or not, we must not be guilty of anything like taking the law into our own hands, and converting it from what it really is to what we may think it ought to be. I must lay the law down to you as I understand it, and as I read it in the books of authority. Mr. Foote, in his very able speech, spoke with something like contempt of "the late Mr. Starkie." He did not know Mr. Starkie; he did not know how able and good a man he was. He died when I was young; but I knew him, and everybody who knew him knew that he was a man, not only of remarkable power of mind, but a man of very liberal opinions; and if ever the task of law-making could safely be left in the hands of any man, it might have been left in his. But what is more material, the statement of the law by Mr. Starkie has again and again been assented to by judges as a correct statement of the existing law, and I will read it as containing in my view a correct statement of it:—"There are no questions of more intense and awful interest than those which concern the relations between the Creator and the beings of His creation; and though, as a matter of discretion and prudence, it might be better to leave the discussion of such matters to those who, from their education and habits are most likely to form correct conclusions; yet it cannot be doubted that any man has a right, not merely to judge for himself on such subjects, but also, legally speaking, to publish his opinions for the benefit of others. When learned and acute men enter upon those discussions with such laudable motives, their very controversies, even where one of the antagonists must necessarily be mistaken, so far from producing a mischief, must in general tend to the advancement of truth and the establishment of religion on the firmest and most stable foundations. The very absurdity and folly of an ignorant man, who professes to teach and enlighten the rest of mankind, are usually so gross as to render his errors harmless; but, be this as it may, the law interferes not with his blunders so long as they are honest ones, justly considering that society are more than compensated for the partial and limited mischief which may arise from the mistaken endeavours of honest ignorance, by the splendid advantages which result to religion and truth from the exertion of free and unfettered minds. It is the mischievous

abuse of this state of intellectual liberty which calls for penal censure. The law visits not the honest errors, but the malice of mankind. A wilful intention to pervert, insult, and mislead others by means of licentious and contumelious abuse applied to sacred subjects, or by wilful misrepresentations, or artful sophistry, calculated to mislead the ignorant and unwary, is the criterion and test of guilt. A malicious and mischievous intention, or what is equivalent to such an intention, in law as well as morals—a state of apathy and indifference to the interests of society—is the broad boundary between right and wrong":—(Starkie on Slander and Libel, 4th edition, p. 599). And there is a passage in the book which appears to have been taken from Michaelis, in which it is pointed out with some truth that in one view the law against blasphemous libel may be for the benefit of the libeller himself, who otherwise may encounter popular vengeance. The Chief Justice quoted the passage, and stated that the principle of the law was as laid down by Starkie; and that he was not satisfied that the law was laid down differently by a study of the cases. He proceeded to refer to *Rex v. Taylor*, Venty, 293, before Lord Hale; *Rex v. Woolston*, Str. 834, better reported, as the Chief Justice said, in Fitzgibbon 64, before Lord Raymond; and *Rex v. Waddington*, 1 B. & C. 26, before Lord Tenterden, Mr. Justice Bayley, Mr. Justice Holroyd, and Mr. Justice Best. After referring to the passages cited by one of the defendants from various writers, the Chief Justice concluded:—"What he has to show is, not that other persons were as bad, but that he is not bad—not that others are guilty, but that he is not so. It is no defence for him to bring forward cases some of which I confess I cannot distinguish from his own. It is not enough to say that these persons have published blasphemy, if they are not brought before us. I not only admit, but feel that, if laxity in the administration of the law is bad, the most odious form of laxity is a discriminating laxity, which lays hold of particular persons, and does not lay hold of others liable to the same censures. But that has nothing to do with this case. The case is here; and whether or not other persons ought to be where the defendants stand, the question is, What judgment should be passed upon them? We have to administer the law, whether we like it or not. It is undoubtedly a disagreeable law to administer; but I have given you reasons for thinking it is not so bad