

**THE LAW OF BLASPHEMOUS
LIBEL: THE SUMMING
UP IN THE CASE OF
REGINA V. FOOTE & OTHERS**

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The Law of Blasphemous Libel: The Summing Up in the Case of Regina V. Foote & Others by
John Duke Coleridge Coleridge

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THE LAW OF BLASPHEMOUS LIBEL.

THE SUMMING UP

IN THE CASE OF

REGINA *v.* FOOTE & OTHERS.

REVISED AND WITH A PREFACE

BY THE

LORD CHIEF JUSTICE OF ENGLAND.



LONDON:

STEVENS AND SONS, 119, CHANCERY LANE.

Law Publishers and Booksellers.

1883.



LONDON :

BRADBURY, AGNEW, & CO., PRINTERS, WHITEFRIARS.

PREFACE.

No one can be more sensible than I am of the faults and shortcomings of the summing up which is here published. I confess that I did not appreciate the importance of the occasion. Still less did I foresee the interest which my words would excite, or conceive that I was doing anything but a common duty in a common manner. From causes with which I need not trouble the public, I was not equal to any careful or sustained effort. This charge, therefore, must not be considered as put forward by me as having any pretension to be a complete or exhaustive discussion of the questions handled in it. But it has excited more attention than it deserves, and it has been much misrepresented. I am told by others whose judgment I respect, that a correct version of it may be useful; and I have made the best use I could of the necessarily imperfect materials which are alone at my disposal. Accordingly this charge is now published; and I hope, though not quite in the sense of the young gentleman who is reported to have used the words, that "the law of the Chief Justice may be safely left to take care of itself."

C.



SUMMING UP TO THE JURY

IN THE CASE OF

REG. *v.* RAMSEY AND FOOTE.

GENTLEMEN OF THE JURY.

THE two defendants are indicted for the publication of blasphemous libels; and the two questions which arise for your consideration, are: First, Are these publications in themselves blasphemous libels? Secondly, If they are so, is the publication of them traced home to the defendants so that you can find them guilty.

I will begin with the last question, though it is reversing the logical order, because it is the shorter and more simple of the two. Both questions are entirely for you. When you have heard what I have to say to you as to the state of the law as I understand it, it will then be for you to pronounce a general verdict of Guilty or Not guilty.

Now for the purpose of this second question, which I deal with first, I will assume for the moment that these are blasphemous libels, but though I assume it now, I will discuss it with you afterwards. Assuming them then to be blasphemous libels, is the publication of them traced home to the defendants?

As you are not the same jury who tried Mr. Bradlaugh, it is necessary for me to repeat to you the direction on this subject which I gave a few days ago to the jury which tried him. As to the matter of publication, the law has been altered in most important respects by a statute passed early in the reign of the present Queen,—6 & 7 Vict. c. 96. It used to be the law that the proprietor of a newspaper was criminally, not merely civilly, but, criminally responsible for a libel inserted in his paper, and that a bookseller or publisher was criminally responsible for a libel in any book which was sold or published under his authority, even though the newspaper proprietor, or the bookseller or publisher did not know of or authorize the insertion of any libel, and did not even know of its existence. But this in the *criminal* law was an anomaly and a grievance which the statute I have referred to was, in its seventh section, intended to remedy. That section came to be considered in the case of *Reg. v. Holbrook*, in which a gross libel on the Town Clerk of Portsmouth had been published in a Portsmouth newspaper. The case was twice tried at Winchester, first before Lord Justice Lindley, and secondly before Mr. Justice Grove. On each occasion the ruling of the Judge who tried the case, was questioned in the Queen's Bench in the time of my predecessor in this seat; on each occasion by the same three Judges, Lord Chief Justice Cockburn, and Mellor, and Lush, JJ.; on each occasion there was the same difference of opinion, the Lord Chief Justice, and Lush, J., holding one

way and Mellor, J., the other. But, notwithstanding this difference of opinion, the case is a binding authority upon me, and I lay down the law to you in the terse and clear language of Mr. Justice Lush. 'The effect of the Statute,' says he (4 L. R. Q. B. 50), 'read by the light of previous decisions, and read so as to make it remedial, must be, that an authority from the proprietor of a newspaper to the editor or publisher to publish what is libellous, is no longer to be, as it formerly was, a presumption of law, but a question of fact. Before the Act the only question of fact was, whether the defendant authorized the publication of the paper, now it is whether he authorized the publication of the libel. . . . Criminal intention is not to be presumed, but is to be proved, and in the absence of evidence to the contrary, a person who employs another to do a lawful act, *i.e.*, to publish, is to be taken to authorize him to do it in a lawful and not in an unlawful manner.'" Such is now the law laid down in admirable language by great authority; and it is for you to say whether according to the law as so laid down these defendants (either or both of them) did or did not authorize the publication of these libels.

On the trial of Mr. Bradlaugh this question of fact was the question in the case; he grounded his defence upon the contention, that whatever was the character of the published matter, the publication was not by his authority. That was his defence; and upon that defence, so far as I may presume to assign reasons for the general verdict of a jury, he was acquitted. In the