

= Case of the Dean of St Asaph =

The Case of the Dean of St Asaph , formally R v Shipley , was the 1784 trial of William Davies Shipley , the Dean of St Asaph , for seditious libel . In the aftermath of the American War of Independence , electoral reform had become a substantial issue , and William Pitt the Younger attempted to bring a Bill before Parliament to reform the electoral system . In its support Shipley republished a pamphlet written by his brother @-@ in @-@ law , Sir William Jones , which noted the defects of the existing system and argued in support of Pitt 's reforms . Thomas FitzMaurice , the brother of British Prime Minister Earl of Shelburne , reacted by indicting Shipley for seditious libel , a criminal offence which acted as " the government 's chief weapon against criticism " , since merely publishing something that an individual judge interpreted as libel was enough for a conviction ; a jury was prohibited from deciding whether the material was actually libellous . The law was widely seen as unfair , and a Society for Constitutional Information was formed to pay Shipley 's legal fees . With financial backing from the society Shipley was able to secure the services of Thomas Erskine KC as his barrister .

Shipley was tried in 1784 by Mr Justice Buller and a specially convened jury at Shrewsbury . Edward Bearcroft , counsel for the prosecution , argued that on the basis of the existing system the jury could not decide on the nature of the pamphlet , while Erskine argued not only that they could , but that the material did not constitute seditious libel , containing as it did " a solemn protest against all sedition " . Persuaded by Erskine 's arguments , the jury ruled that Shipley was neither " guilty " or " not guilty " , but instead " guilty of publication only " , a confusing and non @-@ standard ruling which , after a long dialogue , Mr Justice Buller declared to mean " guilty on all charges " . Erskine appealed the decision to the Court of King 's Bench on 8 November , where the judges again ruled that juries could not decide whether material was libellous , but nevertheless released Shipley on a technicality ; his freedom was greeted with fireworks and bonfires , and Erskine was rewarded with the Freedom of the City of Gloucester . Still seeking to reform the law , Erskine sent the court records to Charles James Fox and Lord Camden , who , after much effort , passed the Libel Act 1792 , which secured the right of juries to decide whether material was libellous .

= = Background = =

Following the end of the American War of Independence , British public attention had turned to the need for Parliamentary reform ? specifically , the lack of franchise in many towns and the presence of rotten boroughs . In response , William Pitt the Younger brought the idea of reform before Parliament and , in support of his actions , Sir William Jones wrote and published a pamphlet titled A Dialogue between a Farmer and a Country Gentleman on the Principles of Government , which covered the " virtues of government and defects in the representation of the people " . In 1783 Shipley , Jones 's father @-@ in @-@ law , recommended it to a group of Welsh constitutional reformers and had it reprinted in Welsh with his own preface suggesting it was " just , rational and constitutional " . As a result , Thomas FitzMaurice , the brother of the Earl of Shelburne , indicted Shipley for seditious libel , specifically for " publishing a false , scandalous and malicious libel ... to raise seditions and tumults within the kingdom , and to excite His Majesty 's subjects to attempt , by armed rebellion and violence , to subvert the state and constitution of the nation " .

The law dealing with seditious libel was particularly strict . Acting as " the government 's chief weapon against criticism " , it followed principles laid down in De Libellis Famosis and R v Carr : that seditious libel was a criminal offence , that the intention of the publisher or the truth of the allegations was irrelevant , that mere publication was sufficient for a conviction , and that juries were only allowed to deliver a verdict on whether the material had been published by the defendant , not whether it was libellous . Traditionally , matters of fact were left to the jury and matters of law to the judge , but with seditious libel " matters of law " was construed very widely ; it was the judge 's job to decide if the material was libellous , what constituted " seditious libel " , and the nature of " publication " , which was understood to include almost anything . Even a private letter , if intercepted , could lead to a prosecution .

Because of public disquiet with these principles , Shipley 's trial acted as a " test case " for the law of seditious libel ; a Society for Constitutional Information was formed by concerned citizens and began raising money to pay for his defence . Able to afford the best representation , the society gave the brief to Thomas Erskine KC , a noted defence barrister . The trial was to be heard by Lord Kenyon , then Chief Justice of Chester , at Wrexham ; after travelling 200 miles to the court Erskine discovered that a paper had been circulated in the area arguing that in libel cases juries were allowed to decide whether a publication was libellous , as well as whether it had been published . Citing the paper 's circulation , the prosecution asked for a postponement ; ignoring claims that a delay would cause Shipley hardship , Kenyon agree to postpone the trial . The case was eventually heard on 6 August 1784 by Mr Justice Buller , at Shrewsbury .

= = Trial and appeal = =

Edward Bearcroft , lead counsel for the prosecution , described the Dialogue as libel and argued that the truth of this was not a question for the jury to decide on ; they were bound to convict the defendant as long as they decided that he had published the Dialogue , regardless of the contents . Those contents , Bearcroft went on , sought to persuade the public that " every man of age had a right to choose his own representative in Parliament " . Erskine , in his reply , argued that the Dialogue was not libellous (it opened with a preface containing " a solemn protest against all sedition ") , and insisted that the jury had the right to decide what constituted libel :

If they know that the subject of the paper is the topic that agitates the country around them ; if they see danger in that agitation , and have reason to think that the publisher must have intended it , they say he is guilty . If , on the other hand , they consider the paper to be legal and enlightening in principle ; likely to promote a spirit of activity and liberty , in times when the activity of such a spirit is essential to the public safety , and have reason to believe it to be written and published in that spirit ; they say , as they ought to do , that the writer or the publisher is not guilty .

To demonstrate his feelings on the subject , Erskine asked the jury to consider him a fellow defendant , since he intended to publish the pamphlet himself as soon as possible ; he then went through the Dialogue line by line , showing that not only would most people agree with it , but that it was the foundation of Pitt 's Reform Bill . After Erskine concluded his arguments , again stating that the jury should feel free to debate whether the material constituted libel , Mr Justice Buller began his summing up , instructing the jury that they were only allowed to decide on whether Shipley had published the work . The jury retired , and after half an hour of discussion returned to declare Shipley " guilty of publishing only " . After a long and " confounding " debate between Erskine , Buller , and the jury , Buller declared Shipley guilty on all counts .

Erskine immediately appealed the decision to the Court of King 's Bench , where he argued on 8 November that Buller 's statement had misdirected the jury , and that as the jury was traditionally not given the right to investigate Shipley 's actual guilt , the previous trial was invalid ; a jury should be permitted to determine not only whether a statement was published , but whether it was libellous . With the exception of Mr Justice Wiles , the court unanimously declared that Erskine 's arguments were incorrect , and that the jury had no such role ; accordingly , his appeal was denied . Shipley was , however , later freed when the King 's Bench held that the initial indictment had been invalid because " there were no averments to point the application of the paper as a libel on the king and government " .

= = Aftermath = =

Although the case did not directly lead to legal change , it was nevertheless widely seen as a victory ; upon his release Shipley was greeted with fireworks and bonfires , and Erskine was rewarded with the Freedom of the City of Gloucester . Erskine , however , perceived it differently , and had records of the entire trial printed and sent to Charles James Fox and Lord Camden . Taking this as a hint , Fox (after much delay) introduced a Bill to Parliament in May 1791 , seeking to reform the law relating to libel . After it was passed through the Commons it went to the House of

Lords , where members of the judiciary attempted to delay it ; in response Lord Camden , then 78 , rose and bluntly stated that if the judges were to be the sole arbiters of public opinion , nothing would be able to appear that criticised the government , leading to a stifling of the freedom of the press . His appeal was successful ? without it , historian H. M. Lubasz writes , the Bill would never have passed the Lords ? and within three weeks Parliament had formally passed the Libel Act 1792 , commonly known as Fox 's Libel Act , allowing juries for the first time to decide precisely what constituted libel .