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In 1784, William Shipley, the son of St Asaph’s radical bishop Jonathan Shipley, and himself the Dean of St Asaph, was prosecuted for republishing a controversial political pamphlet. William Jones, the pamphlet’s author and a recently appointed colonial judge, was surprised to find a prosecution for the publication of an abstract work of political philosophy was even possible. The Treasury refused to pay the costs of the prosecution. While an English jury was eventually persuaded to convict Shipley ‘of publishing’ the pamphlet, he was subsequently discharged by the judges of The King’s Bench, owing to the fact that under the prevailing doctrine of seditious libel a guilty verdict was understood as a de facto special verdict, leaving legal questions (including whether a particular pamphlet was actually seditious) to a later judicial determination. This case is primarily famous because of the challenge it posed to this established doctrine, highlighting the fact this strange form of verdict was, in Lobban’s words, an ‘unworkable stretching of the law’. It ultimately led to the passage in 1792 of legislation condemning the practice as contrary to the common law. And it is not only modern commentators who have considered Shipley’s trial to be a landmark case in the criminal law. Two decades after it was decided, the Whig Edinburgh Review, praising Thomas Erskine’s defence of Shipley as ‘by far the

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1 I am grateful to Arlie Loughnan and Colin Murray for comments on earlier drafts of this chapter. I am also grateful for the helpful feedback I received from the other contributors to this volume at the ‘Landmark Cases in Criminal Law’ workshop at the University of Cambridge, as well as the helpful comments from the editors of this volume on an earlier draft of this chapter.

2 See e.g. N Sykes, Church and State in England in the Eighteenth Century (Cambridge, CUP, 1934) 52, 64, 341.

3 R v Shipley (1784) 21 St Tr 847. Throughout this chapter, I shall primarily rely upon the report in the State Trials, rather than Douglas’ report (R v Shipley (1784) 4 Doug KB 73; 99 ER 774), due to the detail in the State Trials account.


5 Erskine used this as a way of arguing at Shipley’s trial that the publication was not seditious, as the government had no desire to have Shipley prosecuted: R v Shipley (1784) 21 St Tr 847,901-902. The Treasury may have felt that Shipley’s high-status prosecutor – the outgoing Prime Minister’s brother – could afford the expense. Shipley himself hinted at this possibility when addressing Lord Kenyon at the Denbigh assizes: R v Shipley (1784) 21 St Tr 847, 874 (see King on the strong inverse correlation between the social status of a prosecutor and their receipt of expenses in property crimes: P King, Crime, Justice and Discretion in England 1740-1820 (Oxford, OUP, 2000) 47-52).


8 Libel Act 1792, 32 Geo 3, c 60; subsequently repealed by the Coroners and Justice Act 2009, sch 23, pt 2.
most learned commentary on that inestimable mode of trial, which is anywhere to be found’, argued that the Act of 1792 was ‘merely declaratory of the principles, which were laid down in this argument with unrivalled clearness’.8

Shipley’s trial is a ‘landmark case’ in its exploration of the relationship between judge and jury implicit in the general verdict. The Court of Appeal has, in recent years, repeatedly held that the alternative to a general verdict – a ‘special’ verdict, setting out the facts and leaving all legal questions to a subsequent judicial determination – should only be used in criminal cases very rarely;9 but the European Court of Human Rights has held that a general verdict will only be acceptable if the jury’s understanding of the law can be clearly inferred from other elements of the trial, including the details of the indictment and the directions the jurors received from the Bench.10 R v Shipley grapples with similar questions, with defence counsel Thomas Erskine arguing at length that criminal trial juries have a constitutional right to deliver general verdicts, and Lord Mansfield insisting that the general verdict’s opaqueness is contrary to the rule of law. Erskine’s argument ran contrary to the settled eighteenth-century law of seditious libel but, while Mansfield ruled against him, Erskine’s speech at The King’s Bench is widely understood to have led to the passage of the Libel Act 1792, securing the jury’s right to deliver a general verdict in all such cases. This case, while going against the jury’s supposed right, is therefore of central importance to our understanding of the general verdict.

I. The Background to Shipley’s Trial

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9 See, e.g., R v Hopkinson [2013] EWCA Crim 795; [2014] 1 Cr App R 3. The major exception is the verdict of not guilty by reason of insanity, on which see A Loughnan, Manifest Madness: mental incapacity in criminal law (Oxford, OUP, 2012) particularly at 165-167, and her discussion of R v M’Naghton (1843) X Clark & Finnelly 200; 8 ER 718 in this volume. The courts have sometimes been keen to treat general verdicts as a kind of ‘black box’ for concealing legal uncertainty, as in DPP v Shaw [1962] AC 220 (HL), discussed by Henry Mares in this volume.

Shipley was prosecuted for publishing a dialogue between a Gentleman and a Farmer, in which the Gentleman insisted ‘that every state or nation was only a great club’. In other words, the gentleman sought to analogise government to a mutual insurance scheme of working men. Such schemes were well known at the time as an alternative to the support offered by the local church-state hybrid of the parish, and a decade later a social campaigner felt able to praise them as demonstrating ‘one great and fundamental truth, of infinite national importance; viz. that, with very few exceptions, the people, in general of all characters, and under all circumstances, with good management, are perfectly competent to their own maintenance’. One consequence of this analogy was that the Gentleman was able to persuade the Farmer that a nation’s laws, just like the rule governing the local scheme, must all be made by mutual consent; that political representation must be open to all men not reliant on parish relief; and that tyrants may be removed by force. Membership of such clubs was limited, however, by the informal requirement for members to have income to spare, and by the formal requirement imposed by some societies that members must be drawn from a particular cultural or professional class. We can also see echoes of this set of qualifications in the Gentleman’s argument that political representation is no concern of those reliant on parish relief. The “Farmer”, then, should probably be understood as a member of the public, rather than a penniless revolutionary – what contemporaries would have described as a member of a democratic ‘mob’. The Gentleman concluded by convincing this implicitly middles-class Farmer that the best way to protect against future tyranny was for gentlemen to provide their farmers with firearms, and for the farmers to ‘spend an hour every morning ... in learning to prime and load expeditiously, and to fire and charge with bayonet firmly and regularly.

11 Shipley’s edition, under the title The Principles of Government, in a Dialogue between a Gentleman and a Farmer, was reprinted as an appendix to M Dawes, England’s Alarm! On the prevailing doctrine of libels, as laid down by the Earl of Mansfield (London, John Stockdale, 1785). The original pamphlet had a slightly different title: [W Jones], The Principles of Government, in a Dialogue between a Scholar and a Peasant (Society for Constitutional Information, 1782).
12 R v Shipley (1784) 21 St Tr 847,895.
15 ibid 896.
16 ibid 896.
17 ibid 897-898.
18 Gosden notes, for example, that it was not until the 1850s that agricultural labourers seem to have joined the affiliated orders (i.e. larger societies organised on a federal, rather than purely local, basis) in large numbers: PHJH Gosden, The Friendly Societies in England 1815-1875 (Manchester, Manchester UP, 1961) 81.
20 ibid 898.
The pamphlet had not been written by the Dean, but was instead the work of his brother-in-law, the then barrister and philologist William Jones.21 Shipley felt the pamphlet deserved a wide readership, and secured the consent of ‘a committee of gentlemen of Flintshire … associated for the object of reform’22 to have the pamphlet republished. In a short preface, Shipley argued that given Jones’ work had been ‘publicly branded with the most injurious epithets … the sure way to vindicate this little tract from so unjust a character, will be as publicly to produce it’.23 Unfortunately for Shipley, one of the more consistent features of the doctrine of seditious libel was a policing of public discourse: in de Libellis Famosis, for example, Coke had analogised libels to vigilantism publicly subverting the authority of those occupying governmental offices;24 and in 1688, in the famous Case of the Seven Bishops, the bishops were prosecuted not so much for disagreeing privately with the king as for the reputational damage caused by the public airing of their grievances.25 By the early eighteenth century, Holt CJ had expanded the doctrine so that it no longer simply protected the king and particular officers from public criticism, but also protected Government itself, with Holt holding that ‘[i]f men should not be called to account for possessing the people with an ill opinion of Government, no Government can exist.’26 Shipley sought to defend his republication of Jones’ pamphlet through an early version of the ‘marketplace of ideas’ argument but the problem for Shipley was precisely that he ‘had chosen to give it a wider airing by exposing it to the poorer reader’.27 And it was this which seems to have prompted local elites to pursue a prosecution.28

Social historians have noted the growing significance of written, as opposed to purely oral, libels at this time. Shoemaker argues that an eighteenth-century decline in public insult stemmed from a growing sense that the community no longer had a legitimate role in the enforcement of a single monolithic morality; and that the decline in prosecutions for oral slander was connected to a feeling that such slanders were usually committed in the heat of the moment and, therefore, lacked intent.


22 ‘Speech of the Honourable Thomas Erskine, at Shrewsbury, August the Sixth, AD 1784, for the Reverend William Davis Shipley, Dean of St Asaph, on his Trial for Publishing a Seditious Libel’ in JL High (ed), Speeches of Lord Erskine while at the Bar, vol 1 (Chicago, Callaghan & Co, 1876) 156.

23 R v Shipley (1784) 21 St Tr 847,892.

24 The Case de Libellis Famosis (1605) 5 Co Rep 125a, 125b.


26 R v Tutchin (1704) 14 St Tr 1095, 1128. See generally Hamburger (n 5) 734-743.

27 Lobban (n 6) 316.

Printed libels, he concludes, were particularly pernicious both because they could be expected to reach wider audiences than community-driven oral slander and because the fact they took a relatively long time to produce suggested intention.\(^{29}\) But while Shoemaker’s argument suggests printed libels were cleanly distinguishable from community morality, Olson has argued that the contest over juror power in seditious libel trials on both sides of the Atlantic demonstrates these trials concerned the constitution of a community’s shared political outlook.\(^{30}\) As the ‘seditious’ aspect of ‘seditious libel’ concerned attacks on government (whether conceived narrowly as individual office-holders or broadly as government itself), what was at stake in the late-eighteenth century seditious libel trials was not simply a narrow question of doctrine but, rather, the question of who should define the limits of critical comment regarding government: state insiders, as represented by the judge, or members of the public, as represented by the jury? For Mansfield the lifelong supporter of political authority, the answer was clear, and yet this very clarity prevented him from seeing the central judicial role preserved under Erskine’s model of the general verdict.

As we shall see below, the prosecutor in Shipley’s trial eventually removed the case from its native Welsh context to an English town; and this certainly suggests the prosecutor was aware of seditious libel’s potential to bring community politics into the courtroom. It is possibly an awareness of these issues which led Shipley to translate Jones’ original ‘Peasant’ to a ‘Farmer’,\(^{31}\) and which convinced him to abandon his original plan to publish the pamphlet not only in Wales but, significantly for its proposed political audience, in Welsh.\(^{32}\) While Welsh juries were at times difficult to control, the issue here was not simply the attempt to extend constitutional discourse from an English to a Welsh public.\(^{33}\) While this was doubtless an important part of the political backdrop to Shipley’s trial, the more significant issue seems to have been the concern among local Tory elites that the pamphlet implicitly extended the concept of the ‘public’ to a point where it included a lower-class ‘mob’. It should also be noted that, in rejecting the argument that the jury should have been permitted to return an inscrutable general verdict, both Buller J at first instance and Lord Mansfield on appeal emphasised the threat posed to the rule of law by any attempt to enlarge the jury’s power in this area of the criminal law. This fear was revisited when Shipley was eventually discharged, with one supporter of the prosecution writing to Lord Kenyon to inform him that ‘[t]he mob escorted [Shipley]

\(^{31}\) Franklin (n 23).
\(^{32}\) \(R\ v\ Shipley\) (1784) 21 St Tr 847,920.
to Ruthin ... All the lower part of the Vale met him there or beyond Denbigh, at which place the two-legged brutes seized the carriage and drew it to Llanerch, where they were received with bonfires, &c. 34 Fears about the public circulation of such ideas and the constitution of a democratic mob clearly loomed large in the decision in *R v Shipley*.

A further problem for Shipley was that, under the doctrine developed over the preceding decades, the legality of the public airing he sought to achieve would not ultimately be judged by the public to whom he was appealing. Jurors in trials for seditious libel were restricted to two factual questions: whether the accused really did publish the allegedly seditious writings, and whether the innuendoes specified in the indictment accurately conveyed the meaning of the document under discussion. 35 It would then be for the judges at Westminster to determine whether the facts alleged in the indictment actually constituted seditious libel. 36 One particularly contentious point in Shipley’s appeal to The King’s Bench would be the origins of this doctrine, and therefore its conformity to the principles of the 1688 Revolution. The doctrine’s effect, if it was allowed to go unchallenged, would be to remove from the jury significant questions of the common law’s relationship to the constitution; and Erskine repeatedly argued – both before the jury and, later, before The King’s Bench – that the political philosophy of the English constitution (not to mention the internal logic of the general verdict) required such questions to be settled by a jury. It was therefore important for Erskine to prove that the established doctrine was a post-Revolutionary innovation, and not an inherent part of the constitutional settlement.

One of the more significant problems Erskine faced in arguing that the settled doctrine was unconstitutional, and that juries should be permitted to return general verdicts encompassing both law and fact in trials for seditious libel, was that this proposition could easily be interpreted as a call for jury lawlessness. This was a particular problem when the case eventually reached The King’s Bench, where Erskine had to reckon with Lord Mansfield. While Mansfield was, in some areas of his judicial practice, accused of acting more like an equitable chancellor than a common-law judge, and while he was keen to use special juries of merchants to help develop commercial law in England, 38 Mansfield was also at times keen to avoid the vagaries of the jury system, treating certainty as the chief virtue of decision-making.

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34 Thomas Pennant to Lloyd Kenyon, 29 Dec 1784, quoted from in Page (n 31) 28.
36 On the development of this doctrine, see the sources referred to at n 6, above.
38 See J.C. Oldham, ‘The Origins of the Special Jury’ (1983) 50 University of Chicago Law Review 137, particularly at 140 n 13; and more generally Oldham (n 3) 79-205.
of a properly functioning legal system. One explanation for the difference in approach may be that in commercial law cases Mansfield used particularly expert jurors, and it may have been that he found such jurors easier to trust than ordinary, non-special jurors. Oldham, on the other hand, has explained the difference between Mansfield’s approach to commercial law and his approach to the law of seditious libel by reference to the judge’s political philosophy, noting that

Had Mansfield approached the doctrine in the spirit of modernizing the law and making it procedurally effective – the spirit that animated his commercial law decisions – he could have agreed with defense counsel and instructed the jury to consider the “whole matter” ... [But] Mansfield the royalist believed at bottom that political authority emanated from the King; documents advocating the contrary view, such as Junius’s letters or even Jones’s dialogue, were, to Mansfield, patently seditious. The position ... that ultimately prevailed [in the 1792 Act] ... was not merely a differing view of the jury function; it was a differing vision of government.40

Oldham’s argument from constitutional principle permits much greater nuance than Holdsworth’s claim that the decision in Shipley should simply be read as a formalistic necessity;41 but in seeking to draw a clear line between Mansfield’s constitutional perspective and his ‘view of the jury function’, Oldham misses something of the relationship between these two points. As we shall see below, Erskine’s argument was just as much about democratic self-governance as it was about procedural theory; and it seems Mansfield’s fear of the politics of jury equity blinded him to the actual image of the judge-jury relationship which Erskine sought to establish. In this way, the crossover between constitutional politics and the judge-jury relationship played a crucial, if slightly out of focus, part in the decision at The King’s Bench.

II. Shipley’s Trial

Shipley was initially indicted at the Welsh town of Denbigh in April 1783. At the start of his trial, the prosecution alleged that the Society for Constitutional Information, which was funding the Dean’s defence, had, in advance of the assizes, circulated writings concerning the jury’s function in trials for

39 See Oldham (n 3) 211.
40 ibid 235. See also Page (n 31) 22. On Mansfield’s ambivalent view of juries generally, see J Oldham, The Mansfield Manuscripts and the Growth of English Law in the Eighteenth Century, vol 1 (Chapel Hill, University of North Carolina Press, 1995) 82-99. Poser has recently argued that Mansfield’s view of authority was necessarily more complex than this, given his close family ties to Jacobitism: NS Poser, Lord Mansfield: Justice in the Age of Reason (Montreal, McGill-Queen’s UP, 2013) 35, 100-111, 244.
seditious libel.\textsuperscript{42} Despite one of the jurors insisting he was unaware of the material being circulated,\textsuperscript{43} the distribution of a pamphlet specifically challenging the procedures followed in such cases was clearly problematic. Erskine, who had been retained on Shipley’s behalf by the Society,\textsuperscript{44} disagreed however, urging that the relevant test was whether the documents circulated had been ‘productive of undue influence’, or would ‘prevent the right administration of justice’ in this particular case.\textsuperscript{45} The fact materials regarding jury trial had been circulated could not, in itself, be sufficient to cause a trial to be postponed unless there was some more specific reason for supposing that the publications were likely to pervert the course of justice. Lord Kenyon, presiding at the Denbigh assizes, agreed with Erskine’s abstract statement of the relevant legal principles, but sharply disagreed with him about their application to this trial, holding that the trial ‘ought not to proceed’ as the Society’s pamphlet ‘may affect some men’s minds’.\textsuperscript{46} When, the following April, the trial came to be heard anew, the prosecutor arrived with a writ of certiorari, removing the case to The King’s Bench.

The King’s Bench directed the trial to be heard at the next Shrewsbury assizes, Shrewsbury being the English assizes closest to Denbigh. This made Shipley’s trial in effect the fact-finding phase of a The King’s Bench trial, with the result that the trial judge refused to give any indication of the legal question whether Shipley’s pamphlet should actually be considered seditious (he thought that giving such directions would mean doing something which was not meant ‘for me, a single judge sitting at nisi prius’).\textsuperscript{47} This later allowed Erskine to argue before the judges of The King’s Bench that his client had not really received a trial at all: that it did not make any sense for a jury to find a person ‘guilty’ if the jurors had not been advised on the relevant law. The trial was eventually heard at Shrewsbury in August 1784, notwithstanding Shipley’s appeal to Lord Kenyon in April the previous year: ‘My lord, in God’s name let me have a verdict one way or the other! don’t let me be kept further in suspense!’\textsuperscript{48} What Shipley perhaps failed to appreciate was that the unusual verdict used in seditious libel trials during the eighteenth century meant that, even if his case had not been twice put off, a jury could not have given him ‘a verdict one way or the other’: if a jury decided he had published the pamphlet, and

\textsuperscript{42} The pamphlet contained extracts from ‘The Life of John Lilburne’ in J Towers (ed), \textit{British Biography}, vol 6 (London, 1770) 63-67 n r; and ‘The Life of Sir George Jefferies’ in J Towers, \textit{British Biography}, vol 6 (London, 1770) 141-143. Towers was himself a member of the Society for Constitutional Information (FD Cartwright (ed), \textit{The Life and Correspondence of Major Cartwright}, vol 1 (London, Henry Colburn, 1826) 135); the Society regularly used pre-trial publicity as a way of spreading its constitutional ideas: Page (n 31) 29.

\textsuperscript{43} \textit{R v Shipley} (1784) 21 St Tr 847,849.

\textsuperscript{44} ibid 862.

\textsuperscript{45} ibid 863.

\textsuperscript{46} ibid 872.

\textsuperscript{47} ibid 944-945.

\textsuperscript{48} ibid 875. Erskine does not appear to have suspected the government of involvement in the change of venue, instead aiming his scorn at the local prosecutor.
that he intended the innuendoes alleged,\textsuperscript{49} he would still have to wait for a separate judicial determination regarding the publication’s seditious nature or effects.\textsuperscript{50}

Much of the debate at the Shrewsbury assizes between Bearcroft (for the prosecution) and Erskine (for the defence) concerned the context of the pamphlet’s allegedly seditious tendencies.\textsuperscript{51} Bearcroft, explaining that ‘the foundation of criminality in a libel’ is ‘to break the public peace’,\textsuperscript{52} focused on the pamphlet’s objective meaning, arguing that its proposals regarding electoral reform could only be understood if set within the context of its discussion of the right to bear arms, implying a violent constitutional change.\textsuperscript{53} Read in this way, the pamphlet as a whole was clearly aimed at breaking the public peace and was, therefore, criminal. Erskine, however, insisted the Farmer was asked not to overthrow the government, but to sign a petition for reform, noting that ‘I do not sign my name with a gun’.\textsuperscript{54} He also observed that the pamphlet actually described three figures against which violent revolutions might occur – a tyrannical monarch, a bad ministry and a corrupt aristocracy – and that the latter two scenarios were explicitly couched in terms of coming to the king’s aid.\textsuperscript{55} Erskine therefore sought to establish, by a close reading of the pamphlet’s text, that it was not objectively seditious. Indeed, the origins of the pamphlet seem to support this interpretation. The Oxford Dictionary of National Biography notes that it ‘began as an essay written at the Paris house of Benjamin Franklin to persuade Franklin that the mysteries of the state might be made intelligible to the working man’,\textsuperscript{56} and it could be argued to have been written with an educational intent; albeit one set against the background of a revolutionary war.

The second half of Erskine’s argument from context concerned the pamphlet’s actual, practical consequences. He claimed to see in Bearcroft’s argument an implicit question: even if we accept that parliamentary reform may be a debatable issue, ‘why tell the people so?’\textsuperscript{57} The main thrust of Erskine’s argument here was against this kind of elitism, although he did briefly – but possibly sarcastically – praise Shipley’s decision not to have the pamphlet translated into Welsh, lest ‘the

\textsuperscript{49} Which were here limited mainly to ‘G’ standing for ‘Gentleman’ and ‘F’ standing for ‘Farmer’.

\textsuperscript{50} The only exception to this being if the jury delivered a general verdict of not guilty; but this would have required a finding that the Dean had not published the pamphlet, a fact which was not disputed at his trial.

\textsuperscript{51} Bearcroft and Erskine appeared on the same side in \textit{R v Bembridge} (1783) 3 Doug 327; 99 ER 679, discussed by Jeremy Horder elsewhere in this volume.

\textsuperscript{52} \textit{R v Shipley} (1784) 21 St Tr 847,886.

\textsuperscript{53} ibid 887-889.

\textsuperscript{54} ibid 909. In fact, calls for a well-regulated militia and for constitutional education were often intertwined in the writings of the various political associations active during the 1780s: Page (n 28) 23.

\textsuperscript{55} ibid 911-912.

\textsuperscript{56} Franklin (n 35).

\textsuperscript{57} \textit{R v Shipley} (1784) 21 St Tr 847,914.
ignorant inhabitants of the mountains ... collect from it, that it is time to take up arms’. Putting any such anti-Wesh prejudices to one side, Erskine nonetheless argued that ‘hewers of wood and drawers of water’ should be made to understand ‘that government is a trust proceeding from themselves’. Drawing on the writings of both the Whig John Locke and the Tory Lord Bolingbroke in order to demonstrate political consensus on this point, he insisted that pursuing a programme of popular constitutional education was not seditious, and that in order for it to be held such his opponent must ‘show ... how this dialogue has disturbed the king’s government’. Before seditious libel can be established, actual disturbances must have occurred. And this, of course, must be a question of fact for the jurors.

But this was only one part of Erskine’s attempt to undermine the settled doctrine. He insisted that by returning a general verdict of ‘guilty’ or ‘not guilty’, the jurors were implicitly being asked to pronounce on more than just the fact of publication (and, where relevant, the innuendoes alleged in the indictment). For if a jury was to accept that the question of seditious intent was to be decided by a judge after the verdict was in, a jury would also be required to bring someone in as ‘guilty’ if they were, for example, charged with publishing the Bible ‘with a blasphemous intention’, even if the only evidence introduced at trial was that the defendant had actually published the book. The form of verdict adopted under the eighteenth-century law of seditious libel, while not a straightforward general verdict – in Shipley, for example, Buller J accepted a verdict of ‘Guilty of publishing, but whether a libel or not the jury do not find’ – still meant the jury must find a defendant ‘guilty’ without any reference to the seditious nature of the impugned publication. For Buller J, this was simply a mechanism for guaranteeing judicial control of the law, thereby upholding the maxim that ‘ad quæstionem facti respondent juratores, ad quæstionem juris respondent judices’. For Erskine, this was illogical: if the question whether the pamphlet was actually seditious is reserved for later judicial

58 ibid 920. After The King’s Bench concluded the pamphlet was not seditious, it was translated into Welsh, becoming, as Ibbetson has noted, ‘the first political tract in Welsh’ (Ibbetson (n 23) 74).
59 ibid 917.
61 R v Shipley (1784) 21 St Tr 847,927.
62 ibid 928.
63 ibid 955.
64 ibid 944-945.
65 Roughly, ‘questions of fact are for the jury while questions of law are for the judge’. Ibid 947. For a detailed discussion of the maxim’s meaning and history, see the argument of Welch, Erskine’s junior counsel, at ibid 1023-1032.
determination, then insisting on a verdict including the word ‘guilty’ meant ‘call[ing] upon [the jurors] to pronounce that guilt, which [the judges] forbid [them] to examine into’. 66 This was in substance therefore a special verdict, a type of verdict in which jurors did not pronounce guilt or innocence; and Erskine believed the English constitution precluded judges from demanding verdicts of this type. This was a common structural feature of Erskine’s argument throughout R v Shipley: beyond simply appealing to recently-decided cases (on which he clearly knew his position was fairly weak), he also peppered his argument with appeals to constitutional history67 and the internal logic of the institutions he was critiquing.68

While Erskine’s argument at the Shrewsbury assizes was quite basic (at least compared to the detailed form it would take at The King’s Bench), he was careful to explain that none of this was meant as an incitement to juror licentiousness. He explained to Shipley’s jurors that he simply desired ‘that the judgment of the court should be a guide to yours in determining, whether or not this pamphlet should be a libel’69 and insisted that, after Bushell’s Case,70 the courts had no power to compel special verdicts.71 But rather than encouraging a tension between judges and jurors, he was clear that they should respect one another’s true functions:

The days I hope are now past, when judges and jurymen upon state trials, were constantly pulling in different directions; the Court endeavouring to annihilate altogether the province of the jury, and the jury in return listening with disgust, jealousy, and alienation, to the directions of the Court.— Now [defendants] may be expected to be tried with that harmony which is the beauty of our legal constitution:— the jury preserving their independence in judging of the intention, which is the essence of every crime ... listening to the opinion of the judge upon the evidence, and upon the law72

Erskine, in emphasising harmony among institutions not only as ‘the beauty of our legal constitution’ but also as the essence of the jury system, was arguing that the settled law of seditious libel was a violation of constitutional (including revolutionary) principles, and should therefore be abandoned in favour of a more harmonious separation of powers.

In fact, judicial directions were already a well-established part of the political tradition of jury independence: in the years between Bushell’s Case and 1688, several pamphleteers had maintained

66 ibid 906.
67 See in particular Shipley (n 2) 923-928, 974-976.
68 There are echoes here of the techniques Erskine later used in his defence of Paine, discussed in Crosby (n 63).
69 R v Shipley (1784) 21 St Tr 847,922.
70 Bushell’s Case (1670) Vaughan 135; 124 ER 1006.
71 R v Shipley (1784) 21 St Tr 847,926.
72 ibid 900.
that the juror’s oath required him to reach a conscientious verdict, and that this meant judicial
directions must be considered nothing more than advice. This position was built on a presumption
that those called to serve as jurors would already have a working knowledge of the law (and that it
was therefore the citizen’s duty to acquire such an understanding in anticipation of being called to
serve). But Buller J, giving his directions to Shipley’s jury, was evidently not convinced that jurors could
be trusted to understand judicial directions on the law, asking ‘are you possessed of [the relevant]
cases in your own minds? Are you apprized of the distinctions on which those determinations are
founded? Is it not a little extraordinary to require of a jury that they should carry all the legal
determinations in their minds?’ Buller declined to provide any such guidance, and stuck firmly to the
settled doctrine, directing the jurors to return a verdict of “guilty” if they were sure of the publication
and the innuendoes.

Despite Erskine’s earlier insistence that they should treat the settled doctrine as being no less
ineffectual than King Canute’s mock warning to the sea, Shipley’s jurors seem ultimately to have
been perfectly happy to be restricted to a verdict on the facts, but not the law. They wished to make
it clear that they found Shipley was the publisher, and that the innuendoes alleged in the case had
been proven, but that they did not find whether the pamphlet was seditious or not. This was precisely
what Buller had asked them to do, but their refusal to find Shipley simply “guilty” gave the judge a
great deal of trouble, with several pages of the report devoted to his increasingly desperate attempts
to contort their plain meaning into a judicially-acceptable form. These difficulties suggest Erskine’s
arguments had been at least partially successful: while the jurors were willing to be restricted to a
mere finding on the facts, they were unwilling to present their restricted response as a general verdict
(i.e. a verdict of ‘guilty’ or ‘not guilty’). Perhaps spurred on by this partial success, when Erskine took
this case to The King’s Bench his earlier argument regarding the technical structure and ontological
preconditions of the general verdict became central to his overall position.

III. Erskine’s Motion for a New Trial

A. Erskine’s Argument

74 R v Shipley (1784) 21 St Tr 847,947.
75 Ibid 921.
76 R v Shipley (1784) 21 St Tr 847,950-955.
Erskine brought a motion for a new trial on the ground that Buller J had acted improperly in his handling of Shipley’s trial. His argument for a new trial was, ultimately, an argument about the difference between a general and a special verdict. While, as Oldham has observed, there was probably little chance of Erskine actually persuading Mansfield, who had decided many such cases in favour of the settled doctrine, Erskine’s argument at The King’s Bench nonetheless provides a rich theoretical view of the general verdict. Given the well-known connection between \textit{R v Shipley} and the Libel Act of 1792, which famously secured the jury’s right to deliver general verdicts in trials for seditious libel, it will be important to understand what exactly Erskine meant by a ‘general verdict’. Far from being the coded appeal to jury lawlessness which Lord Mansfield and Crown counsel understood it to be, Erskine’s contention was that a general verdict was not possible in the absence of a strong working relationship between judge and jury including, crucially, a judicial direction on the law.

The motion for a new trial was surprisingly lengthy, being reported across more than a hundred pages. Given Lord Mansfield’s well-known support for the existing doctrine of seditious libel, it is at first surprising to see the arguments recited at such great length. The motion’s great length is even more surprising when put in the context of Erskine’s much shorter, and ultimately successful, motion in arrest of judgment. As we shall see below, when Erskine introduced his second motion he explained that he had never been worried about his client’s case, as he always knew that his short, technical argument would be successful. The question then becomes: why did Erskine insist on a lengthy motion which he was reasonably certain would fail? The answer probably lies in the fact his argument was quickly published as a standalone pamphlet. Erskine seems to have believed his argument, however unsuccessful it may have been in the short term, was going to genuinely add something to the ongoing debate about the meaning and purpose of jury trial. Erskine’s argument, which sets out a theoretically robust view of the relationship between judge and jury implicit in the general verdict (albeit one which sat uncomfortably with the day’s doctrine), is what makes Shipley’s trial a landmark case.

Erskine based his motion for a new trial on five main propositions. First, when a defendant puts him- or herself on their country with a general plea of ‘not guilty’, the jury are charged with their

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77 Oldham (n 3) 228-229.
78 \textit{R v Shipley} (1784) 21 St Tr 847, 956-1041; \textit{R v Shipley} (1784) 4 Doug KB 73; 99 ER 774, 784-829.
79 \textit{R v Shipley} (1784) 21 St Tr 847, 1041-1045. On the procedure for making a motion for a new trial or a motion in arrest of judgment at The King’s Bench, see W Tidd, \textit{The Practice of the Court of The King’s Bench in Personal Actions}, vol 2 (London, A Strahan and W Woodfall, 1794) 601-630.
80 See below, n […].
81 W Blanchard ed, \textit{Never before Printed, the Rights of Juries Vindicated. In the speeches of the Dean of St Asaph’s counsel, in the Court of The King’s Bench, Westminster, on the 15th November, 1784} (London, H Goldney, 1785).
general deliverance, and not with a simple finding of facts;\textsuperscript{82} and this is the primary difference between civil and criminal trials.\textsuperscript{83} Second, guilt requires \textit{mens rea}, and ‘the intention, even where it becomes a simple inference of reason from a fact or facts established, may, and ought to be, collected by the jury with the judge’s assistance’.\textsuperscript{84} The only exception he would permit here was where the jury voluntarily delivers a special verdict, making a detailed finding of facts and then leaving it to the court to apply the law to those facts; and, given the first proposition in Erskine’s argument, it must always be the jurors who choose to deliver such a verdict. Third, trials for seditious libel are no different in this respect to ordinary criminal trials: criminal trial juries always have a right to deliver a general verdict.\textsuperscript{85} Fourth, the likely seditious effect of a publication must be a question of fact for the jury.\textsuperscript{86} Finally, if the defendant challenges the allegation in the indictment that he or she had a ‘mischievous intention’, the question of intent becomes a pure question of fact for the jury.\textsuperscript{87} This five-pronged argument has, as its central concern, the legitimate relationship between judge and jury. Which questions are really factual, and which are really legal? Which of these questions is the jury asked to adjudicate on? How do the two halves of the judicial task come to be combined in a single finding of guilt or innocence? Erskine’s theory of the general verdict offers a clear answer to these questions.

Erskine had, at the Shrewsbury assizes, urged Vaughan CJ’s decision in \textit{Bushell’s Case} as grounds for the legal protection of the jury’s right to choose whether to deliver a general or a special verdict; Buller J instead focused on Vaughan’s use of the \textit{juratores non respondent} maxim as justification for the distribution of judicial functions in the eighteenth-century law of seditious libel. It should be noted that Erskine’s argument does indeed diverge from the reasoning in \textit{Bushell’s Case}, but not in the way Buller J had suggested. Vaughan had explained that one reason a jury could not be punished for the exercise of its judicial function was that it was very difficult for a judge to assess the reasoning behind a general verdict. A major cause of this uncertainty was that judicial directions must always be hypothetical: ‘If you find the following facts, the relevant law will be as follows’. The only circumstance in which it would be possible for a jury to be found to have disobeyed judicial directions would, therefore, be if the jurors had already made a conclusive finding of facts before the judge had directed them on the law.\textsuperscript{88} Vaughan’s judgment, therefore, concludes that an extremely contrived set of circumstances would be needed before the precise impact a judge’s directions had on a

\begin{footnotes}
\item[82] \textit{R v Shiple} (1784) 21 St Tr 847,961.
\item[83] ibid 977-979.
\item[84] ibid 961.
\item[85] ibid 962-963.
\item[86] ibid 963-966.
\item[87] ibid 966-967.
\item[88] \textit{Bushell’s Case} (n 73) 144-145.
\end{footnotes}
particular verdict could be established. Erskine’s argument shifts the emphasis in an important way. By insisting that jurors’ inferences from the facts require ‘the judge’s assistance’, judicial directions become a central part of the jury’s task, even when the jury delivers a general verdict. Rather than sharply distinguishing between judge and jury, therefore, as a way of demonstrating the absurdity of punishing a juror for delivering a verdict with which the trial judge disagreed, the general verdict here is a composite product of both judicial actors’ work. This is a central (but easily overlooked) part of Erskine’s argument.

Noting comments to the same effect by The King’s Bench justices Foster and Raymond, Erskine emphasised once again that his was not an argument for jury lawlessness, insisting that jurors ‘have not a capricious discretion to make law at their pleasure, but are bound in conscience as well as judges are to find it truly’. The solution to a perceived problem regarding jury nullification (which was, it must be recognised, a live issue at this time) was not to invent a strange third type of verdict, somewhere between a special and a general verdict: what Erskine referred to as a ‘monster in law, without precedent in former times, or root in the constitution’. Rather, the solution was to be found in the judge’s responsibility to adequately equip the jury with the legal understanding necessary to bring in a general verdict which would be both lawful and conscientious. In short, the general verdict (which the jury was constitutionally entitled to return at its discretion) required cooperation between the two parts of the judiciary in a criminal trial.

As Erskine’s junior counsel, Welch, put it, the basic error in the settled doctrine of seditious libel was the presumption that ‘the office of the judge, was an independent and separate one, from that of the jury’. The judge’s role, Welch insisted, was simply to advise the jury. But unlike the Restoration pamphleteers who used this argument to attempt to neuter the judge in the eyes of a conscientious jury, Welch was keen to emphasise that the judge, while strictly limited to advising the jury, must nonetheless act ‘in a way ... somewhat more than ministerial’. What Welch is alluding to here is a distinction, between ‘ministerial’ and ‘judicial’ functions, which played a key part in

89 M Foster, A Report of Some Proceedings on the Commission of Oyer and Terminer and Gaol Delivery for the Trial of the Rebels in the County of Surrey, and of Other Crown Cases, to Which are Added Discourses Upon a Few Branches of the Crown Law (Oxford, Clarendon, 1762) 255-256; R v Oneby (1726) 17 St Tr 29, 49. Both Foster and Raymond were discussing homicide verdicts, not verdicts for seditious libel; but Erskine’s argument was that this distinction was irrelevant in principle, despite the fact Raymond himself had supported the eighteenth-century doctrine of seditious libel in R v Franklin (1731) 17 St Tr 625.
90 R v Shipley (1784) 21 St Tr 847,982.
92 R v Shipley (1784) 21 St Tr 847,996.
93 ibid 1027.
94 ibid 1030.
Vaughan’s decision in *Bushell’s Case*. ‘Ministerial’ functions are those which, unlike ‘judicial’ functions, are simply required by the holders of a particular office, without the use of discretion or judgement. A key reason why Vaughan would not permit a jury to be punished for bringing in a false verdict was that this would amount to an illegitimate review of a jury acting in its strictly judicial capacity. Erskine, exploring at length the constitutional history of the general verdict, had argued that the task of medieval sheriffs had simply been ‘to summon the jurors, to compel their attendance, ministerially to regulate their proceedings, and to enforce their decisions’. And while judges may initially have been limited to an equally ministerial task, Welch is here arguing, their role is now ‘more than ministerial’. Judges, too, must exercise judgement, but as part of a judicial task which is shared with the jury. Judicial directions on the law, then, become a necessary precondition of a properly constituted general verdict. The lawyers must have known that this argument was unlikely to work, however: a decade earlier, when the diarist and biographer James Boswell had asked Mansfield whether judges could be relied upon to follow judicial directions, he had replied ‘Yes. Except in political causes where they do not at all keep themselves to right and wrong.’ As Poser has recently noted, it seems likely that Mansfield had trials for seditious libel in mind when he made this remark.

B. Crown Counsel’s Response

Crown counsel’s argument did not respond directly to Erskine’s five main propositions, referring instead to the two claims they were reduced to by Mansfield, ‘viz. 1. That the jury not only have the power, but that where they choose, they ought to judge of the law; 2. That the defence was not sufficiently left to the jury as a justification’. In response to the first broad issue, Crown counsel conceded that judges generally had a duty to direct their juries on the law, and that juries had an equivalent duty to obey these instructions. Restrictions on juror punishment, however, meant that these duties were moral rather than legal. In language neatly anticipating Mansfield’s later


96 R v Shipley (1784) 21 St Tr 847,974.


98 Poser (n […]) 120.

99 R v Shipley (1784) 4 Doug KB 73; 99 ER 774, 784.

100 ibid 785-786. Crown counsel argued that ‘corruption only can be a ground for an attaint, not mistake or ignorance’: ibid 786. Modern scholarship suggests the attaint could actually be used for either of these purposes at various points in its history: JQ Whitman, *The Origins of Reasonable Doubt: theological roots of the criminal trial* (New Haven, Yale UP, 2008) 154-156, and the sources cited therein. Nonetheless, by the late-eighteenth
judgment, they argued that allowing juries to decide the law for themselves would leave ‘intricate and abstruse legal questions’ to an inexpert body with a constantly changing membership, meaning that ‘instead of that certainty which is so necessary for the regulation of men’s conduct, the law would regularly fluctuate, and nobody would be able to discover what it is, or where to find it’.

The law of seditious libel escaped this difficulty by insisting that all legally-relevant facts were recorded on the indictment. This meant a jury could find simply on the facts without the need to deliver a detailed special verdict, leaving the law to a later judicial determination. On this approach, the special verdict protected rule-of-law values, with the general verdict tending inevitably towards juror lawlessness.

The second of Mansfield’s two issues can be dealt with fairly briefly. Crown counsel’s argument here was that the mens rea in the crime of seditious libel was an intention to publish, not an intention to cause sedition. The question of intent, then, is indeed a question of pure fact for the jury (as Erskine had argued), provided by ‘intention’ we mean the express intent to publish. ‘But the words “intending to raise seditions”, &c., which are what are used here, are ... words merely expressive of the implied intention, which the law infers, without proof, from the publication of the libel set forth.’ This argument rests heavily on Buller J’s charge at the Shrewsbury assizes which, in turn, drew heavily on the settled eighteenth-century doctrine. As with the settled doctrine more generally, this argument served to distinguish cleanly between the roles of judge and of jury, obscuring the possibility that the general verdict might be understood as the composite product of both judicial bodies in a criminal trial.

C. The Judgments at The King’s Bench

Having heard arguments from both sides, Mansfield decided there were actually four main issues in R v Shipley, rather than the five Erskine had presented or the two Mansfield had instructed Crown counsel to explore. The first issue was that Buller J had not permitted the jury to consider any lawful excuse Shipley may have had for publishing Jones’ pamphlet. Echoing Buller J’s ruling at the Shrewsbury assizes, Mansfield held that lawful excuses were a sentencing consideration, rather than forming any part of the initial question of guilt or innocence, and that it was therefore proper to

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century attainthad fallen into desuetude, with no less a figure than Lord Mansfield dismissing it in 1757 as ‘a mere sound, in every case’, replaced in practice by ‘opportunities of reconsidering the cause by a new trial’. Bright v Enyon (1757) 1 Burr 390; 97 ER 365, 366,

101 R v Shipley (1784) 4 Doug KB 73; 99 ER 774, 784.

102 ibid 784.

103 ibid 790 (emphasis added).
exclude this question from the jury.\textsuperscript{104} The second issue was that Buller J had failed to give an opinion on whether the pamphlet was actually seditious. Third, that he had instructed the jury to ‘leave that question upon record to the Court, if they had no doubt of the meaning and publication’. The final issue was that the jury was not left to consider Shipley’s intent.\textsuperscript{105} Taking these three points together, Mansfield held that the fact seditious libel prosecutions put all relevant facts on record cleanly distinguished between factual questions (for the jury) and legal questions (for the judge). All this meant that ‘a general verdict “that the defendant is guilty” is equivalent to a special verdict in other cases’, with the general verdict simply an administratively easier solution than actually requiring special verdicts.\textsuperscript{106} This conclusion, of course, fails to engage with Erskine’s lengthy theoretical argument about the conditions necessary in order for a jury to find a person ‘guilty’.

Mansfield was sceptical about the extent to which general theory was of value in legal adjudication. After exploring in detail the reported cases on seditious libel from the preceding century (as well as a few cases reported from his own memory),\textsuperscript{107} Mansfield dismissed Erskine’s motion for a new trial by noting that ‘[s]uch a judicial practice in the precise point from the Revolution ... down to the present day, is not to be shaken by arguments of general theory, or popular declamation’.\textsuperscript{108} But it was not simply change that Mansfield opposed: as Oldham has noted, the Chief Justice was happy enough to change the law in other areas. The specific problem here was not change per se, then, but rather a kind of change that replaced the stability of precise legal doctrine (subject to lawful review) with a general theory which called for a constantly shifting, never-ending plebiscite (subject to no meaningful legal constraints):

[W]hat is claimed for? That the law shall be in every particular case what any twelve men, who shall happen to be the jury, shall be inclined to think, liable to no review, and subject to no control, under all the prejudices of the popular cry of the day, and under all the bias of interest in this town, where thousands, more or less, are concerned in the publication of newspapers, paragraphs, and pamphlets [Mansfield presumably meant London, not Denbigh or Shrewsbury]. Under such an administration of law, no man could tell, no counsel could advise, whether a paper was or was not punishable.\textsuperscript{109}

\textsuperscript{104} R v Shipley (1784) 21 St Tr 847,1033.
\textsuperscript{105} ibid 1034-1035.
\textsuperscript{106} ibid 1035.
\textsuperscript{107} ibid 1036-1039.
\textsuperscript{108} ibid 1039.
\textsuperscript{109} ibid 1040. Compare to the comments on the growing idea of the literate “public” in Barker, ‘England, c.1760-1815’, n 19, particularly at 94-95, concerning the collapsing distinction between “high” and “low” politics.
This argument clearly misrepresents Erskine’s position. Far from claiming that juries should be free to depart from core rule-of-law values, his whole argument had been built upon the claim that a general verdict was the shared product of a judge and a jury. Mansfield, in his desire to avoid general theory, and in his aversion to what he considered mob justice, seems to have missed ‘what was claimed for’, relying heavily on an older model of jury equity dating to the Restoration rather than the model actually presented by Shipley’s counsel.

While all three judges at The King’s Bench agreed that the motion for a new trial should be dismissed, there were differences between them. Willes J agreed in several important points of principle with Erskine, but did not think many of these principles actually applied to Shipley’s trial. He agreed, for example, that criminal trial juries had a right to deliver general verdicts, but did not think Shipley’s jury had been denied this right, interpreting the back-and-forth between Buller J and the jury as evidence of the jurors’ willingness to return what amounted to a special verdict. But while Willes was in broad agreement with Erskine on the jury’s right to deliver a general verdict, he did not join him on the question of a judicial duty to direct on the law, conceding no more than that ‘I think it is fit, it is meet and prudent, that the jury should receive the law of libels from the Court’, and explicitly stating that the general verdict gave trial juries a power to escape the worst excesses of the criminal law. While Willes J purported to be in agreement with Erskine on this point, he seems to have shared Mansfield’s misunderstanding, treating the motion for a new trial as a coded argument for juror lawlessness. But while Willes J agreed with (what he took to be) Erskine’s abstract argument, he did not agree that the jury had actually been denied their right to deliver a general verdict on this occasion. Equally, while the jury should have heard any evidence genuinely tending to excuse or justify the Dean’s publication, he doubted the evidence presented at trial actually satisfied this requirement.

Shipley, then, was not granted a new trial. But the immediate consequences of this decision were not particularly serious for the dean: Mansfield had already had him released on bail (with Bearcroft’s consent), and Erskine followed his unsuccessful argument for a new trial with a successful motion in arrest of judgment. He once again argued that the jury’s verdict had not really been either a general or a special verdict, but recognised that he was unlikely to persuade the court

110 Despite his well-known insistence that justice should be done, though the heavens fall, it should be remembered that Mansfield had recently lost his London home in the Gordon riots: Poser (n [...]) 254, 295, 360-375.
111 Ashurst J only provided a separate judgment in order to make it clear that his vote rested on Mansfield’s rather than Willes’, reasoning: R v Shipley (1784) 4 Doug KB 73; 99 ER 774, 784, 827.
112 ibid 826-827.
113 ibid 824.
114 ibid 827.
115 R v Shipley (1784) 21 St Tr 847,987 n*.
on this point. Nonetheless, he felt ‘the warfare was safe for his client, because he knew he could put an end to the prosecution any hour he pleased, by the objection he would now at last submit to the Court’.\(^\text{116}\) To this end Erskine complained that the indictment had been defective, failing to refer to the contextual questions at the heart of the prosecution’s case. In the absence of such political context featuring on the record, the The King’s Bench justices could only assess the pamphlet’s seditious tendencies as if it had been taken off the dusty shelves of a library, and looked at in the pure abstract’.\(^\text{117}\) Mansfield agreed, and invited the prosecution to identify the objective sedition in the pamphlet; they failed to convince the court, however, and Shipley was accordingly discharged.

IV. Conclusions

Erskine’s primary argument, concerning the meaning of the general verdict and the respective roles of judge and jury, failed ultimately to persuade the court. This does not mean the argument was not ultimately effective, however: the 1792 Libel Act provided that criminal trial juries have the right to return a general verdict\(^\text{118}\) and, crucially, that such verdicts should be preceded by the judge’s ‘opinion and directions to the jury on the matter in issue ... in like manner as in other criminal cases’.\(^\text{119}\) While an examination of the legislative debates leading to the passage of the 1792 Act is well beyond the scope of this chapter, it seems clear enough that Erskine’s argument in defence of the Dean of St Asaph was centred on what became the two key principles in the subsequent Act: that it is for juries to choose whether they deliver a special or a general verdict, and that a properly constituted general verdict requires adequate judicial directions. To the extent that the Libel Act seems to have reined in jury lawlessness in trials for seditious libel,\(^\text{120}\) this should be understood as part of the move in Erskine’s argument from a model of the general verdict predicated on a mutual antagonism between judge and jury towards one which sees the general verdict as the shared product of the two judicial actors.

In making this argument, Erskine was keen to establish that a general verdict was not, as Mansfield feared, an incitement to mob justice opposed to the rule of law. Rather, by emphasising that the judge’s role was not simply to administer a trial, but to participate fully in the jury’s judicial task, Erskine sought to establish that the correct legal norms could always be pre-loaded into a general verdict by any sufficiently competent judge. These are precisely the issues the European Court of Human Rights’ recent decision in \textit{Taxquet} requires European jury systems to attend to, and so a proper

\(^{116}\) ibid 1041-1042.

\(^{117}\) ibid 1043.

\(^{118}\) Libel Act 1792, s 1.

\(^{119}\) ibid s 2.

\(^{120}\) See Stephen (n 6) 363; and Lobban (n 6) 321.
understanding of Erskine’s arguments in *The Dean of St Asaph’s Case* will make an important contribution to the continued debate over the compatibility of unreasoned verdicts under the Article 6 guarantee of properly reasoned decisions. Shipley’s trial remains a landmark case in the criminal law.