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THE TRIAL

*Benny Whitman*  
OF THE  
*Quincy*

BOOT & SHOEMAKERS

OF PHILADELPHIA,

ON AN INDICTMENT

FOR A COMBINATION AND CONSPIRACY

TO RAISE THEIR WAGES.

*George Puddis, et al., defendants*

---

TAKEN IN SHORT-HAND,  
BY THOMAS LLOYD.

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PHILADELPHIA:

PRINTED BY B. GRAVES, NO. 40, NORTH FOURTH-STREET,  
FOR T. LLOYD, AND B. GRAVES.

.....  
1806.

April 9, 1928.

Kress

Rosen

70756

*District of Pennsylvania, to wit:*

BE it remembered, That on the twenty-fourth day of May, in the thirtieth Year of the Independence of the United States of America, A. D. 1806. Thomas Lloyd, and Bartholomew Graves, of the said District, have deposited in this office, the Title of a Book, the right whereof they claim as Proprietors, in the words following, *to wit:*

“ The Trial of Boot and Shoemakers of Philadelphia, on  
“ an Indictment for a Combination and Conspiracy  
“ to raise their wages. Taken in short-hand by Thomas  
“ Lloyd.”

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(L. S.)

D. CALDWELL,

*Clerk of the District of Pennsylvania.*

A. J. B. [unclear]

ms

1817

TO THOMAS M'KEAN, GOVERNOR,

AND

*The General Assembly of Pennsylvania,*

IS dedicated the report of the most interesting law case, which has occurred in this state since our revolution...with the hope of attracting their particular attention, at the next meeting of the Legislature.

“ It is better that the law be known and certain, than that it be right,”

With respect,

I am,

Fellow citizens,

Your most obedient.

THOMAS LLOYD.

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# THE TRIAL

OF THE

JOURNEYMEN BOOT & SHOEMAKERS

OF PHILADELPHIA.

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MAYOR'S COURT.

*PRESENT,*

LEVY, *Recorder*; INNSKEEP, *Mayor*;

AND

PETIT, DOUGLASS, and CARSWELL, *Aldermen.*  
*The Commonwealth against George Pullis, et al.*

THE JURY.

- |                              |                             |
|------------------------------|-----------------------------|
| 1 Isaac Watkins, Innkeeper,  | 7 John Livzey, Taylor,      |
| 2 Wm. Allibone, Merchant,    | 8 S. Kennedy, Innkeeper,    |
| 3 James Flamand, Grocer,     | 9 John Clark, Tavernkeeper, |
| 4 John Kunius, Hatter,       | 10 Thos. M'Clean, Bottler,  |
| 5 W. Henderson, Tobacconist, | 11 James Eccles, Grocer,    |
| 6 D. Lowndes, Watchmaker,    | 12 Neil Sweeney, Grocer     |

Jonathan Wharton, Shoemaker, was drawn as one of the jurors, but objected to on account of his occupation.

*Counsel for the Prosecution.*

JARED INGERSOL AND JOSEPH HOPKINSON.

*Counsel for the Defendants.*

CAESAR A. RODNEY AND WALTER FRANKLIN.

MR. HOPKINSON.

May it please the court. The bill of indictment exhibited before you, and which you, gentlemen of the jury, are sworn to try, charges an offence not of every day's production; in order that you may fully comprehend the extent of the charges against the defendants; and although the bill is long, I will read the whole of it to you, for your information. It is in these words:



BE IT REMEMBERED, that at mayor's court held at Philadelphia, for the city of Philadelphia, before John Inskip, Esq. mayor, Moses Levy, Esq. recorder, and Philip Wager, Esq. Andrew Pettit, Esq. and Abraham Shoemaker, Esq. aldermen of the said city, on Thursday the second day of January in the year of our Lord one thousand eight hundred and six, by the oaths or affirmations of David C, Claypoole foreman, John Bohlen, Andrew Kennedy, Joseph Price, Joseph Simmons, John Wistar, Jacob Christler, Joseph Worrell, James Crukshank, Samuel Richards, John Markland, Jacob Schreiner, Martin Hartley, Augustus Friecke, and James Cameron, good and lawful men of the said city, then and there sworn, or affirmed, and charged to enquire for the said city: it is presented that the annexed bill of indictment is true.

*January Sessions, 1806.* }  
*City of Philadelphia,* }<sup>ss.</sup>

The grand inquest of the commonwealth of Pennsylvania, inquiring for the city of Philadelphia upon their oaths and affirmations, respectively, do present that George Pullis, Peter Pollen, John Harket, John Hepburn, Underl Barnes, John Dubois, George Keimer, and George Snyder, late of the city of Philadelphia, aforesaid, being artificers workmen and journeymen in the art and occupation of a cordwainer, and not being content to work, and labour in that art and occupation, at the usual prices and rates for which they and other artificers workmen and journeymen, in the same art and occupation were used and accustomed to work and labour; but contriving, and intending unjustly and oppressively, to increase and augment the prices and rates usually paid and allowed to them and other artificers, workmen, and journeymen, in the said art, and occupation, and unjustly to exact and procure great sums of money, for their work and labour, in the said art and occupation, on the first day of November in the year of our Lord one thousand eight hundred and five, with force and arms did combine, conspire, confederate, and unlawfully agree together, at the city of Philadelphia, aforesaid, that they, the said George Pullis, Peter Pollen, John Harket, John Hepburn, Underl Barnes, John Dubois,

George Keimer, and George Snyder, or any of them would not, nor should work and labour, in the said art and occupation, but at certain large prices and rates, which they the said George Pullis, Peter Pollen, John Harket, John Hepburn, Underl Barnes, John Dubois, George Keimer, and George Snyder, then and there insisted on being paid, *for their future work and labour* in the said art and occupation, for and upon, and in respect of certain particular sorts of work and labour in the said art and occupation, that is to say: for making fancy boots, the sum of five dollars for making back strap boots the sum of four dollars, for making long boots the sum of three dollars, for making cossacks the sum of three dollars, and for making bootees the sum of three dollars, which, said several rates and prices which were so as aforesaid, fixed and insisted on by the said George Pullis, Peter Pollen, John Harket, John Hepburn, Underl Barnes, John Dubois, George Keimer, and George Snyder, were at the time of their being so fixed and insisted on by them the said, George Pullis, Peter Pollen, John Harket, John Heppurn, Underl Barnes, John Dubois, George Keimer, and George Snyder, more than the several and respective prices and rates, which had been, and which were then used and accustomed to be paid and allowed to them, the said George Pullis, Peter Pollen, John Harket, John Hepburn, Underl Barnes, John Dubois, George Keimer, and George Snyder, and other artificers, workmen, and journeymen employed in the said art and occupation of a cordwainer, for and upon and in respect of the said particulars and respective sorts of work and labour, for and upon and in respect of which the same were so respectively fixed and insisted on by the said George Pullis, Peter Pollen, John Harket, John Hepburn, Underl Barnes, John Dubois, George Keimer and George Snyder, as aforesaid, to the damage injury, and prejudice, of the masters employing them in the said art and occupation, of a cordwainer and of the citizens of the commonwealth generally, and to the great damage and prejudice of others artificers, and journeymen, in the said art and occupation of a cordwainer, to the evil example of others, and against the peace and dignity of the commonwealth of Pennsylvania.

2. And the inquest aforesaid upon their oaths, and affirmations aforesaid, do further present that the said George Pullis, Peter Pollen, John Harket, John Hepburn, Underl Barnes, John Dubois, George Keimer, and George Snyder, being artificers workmen, and journeymen, in the said art and occupation of a cordwainer, and not being contented to work and labour, in that art, and occupation, at the usual prices and rates, for which they and other artificers, workmen, and journeymen, in the same art and occupation, were used and accustomed to work and labour, but contriving and intending, unjustly and oppressively to increase and augment the prices, and rates usually paid, and allowed to them and other artificers, workmen, and journeymen, in the said art and occupation, and unjustly to exact and procure great sums of money for their work and labour, on the said first day of November one thousand eight hundred and five, with force, and arms, at the city of Philadelphia, aforesaid, unlawfully did combine, conspire, confederate, and agree together, that, they the said George Pullis, Peter Pollen, John Harket, John Hepburn, Underl Barnes, John Dubois, George Keimer, and George Snyder, or any of them would not, nor should, and also that they the said George Pullis, Peter Pollen, John Harkes, John Hepburn, Underl Barnes, John Dubois, George Keimer, and George Snyder, and each, and every of them should and would endeavour to prevent by threats, menaces, and other unlawful means, other artificers, workmen, and journeymen, in the said art and occupation, from working and labouring in the said art and occupation, but at certain large prices, and rates which they the said George Pullis, Peter Pollen, John Harket, John Hepburn, Underl Barnes, John Dubois, George Keimer, and George Snyder, then and there fixed and insisted on being paid for their future work and labour, in the said art and occupation, for and upon and in respect of certain and particular sorts of work, and labour in the said art and occupation, that is to say for making fancy boots the sum of five dollars for making back strap boot's the sum of four dollars, for making long boots the sum of three dollars, for making cossacks the sum of three dollars, and for making bootees the sum of three dollars, which said several rates and prices, which were so as



last, aforesaid, fixed and insisted on by the said George Pullis, Peter Pollen, John Harket, John Hepburn, Underl Barnes, John Dubois, George Keimer, and George Snyder, were more than the several, and respective rates and prices, which had been, and which were used and accustomed, to be paid, and allowed to them the said George Pullis, Peter Pollen, John Harket, John Hepburn, Underl Barnes, John Dubois, George Keimer, and George Snyder, and other artificers, workmen, and labourers employed in the said art and occupation of a cordwainer, for and upon and in respect of the said several and respective sorts of labour, for upon and respect of which the same were so respectively fixed and insisted on by the said George Pullis, Peter Pollen, John Harket, John Hepburn, Underl Barnes, John Dubois, George Keimer, and George Snyder, as last aforesaid to the great damage, injury and prejudice of the masters employing them in the said art and occupation of a cordwainer....and of the citizens generally of the commonwealth, and to the great damage and prejudice of others, artificers and journeymen, in the said art and occupation of a cordwainer, to the evil example of others, and against the peace and dignity of the commonwealth of Pennsylvania.

3. And the inquest aforesaid, upon their oaths and affirmations aforesaid, do further present, that, the said George Pullis, Peter Pollen, John Harket, John Hepburn, Underl Barnes, John Dubois, George Keimer, and George Snyder, being artificers, workmen and journeymen in the said art and occupation of a cordwainer, on the same day and year aforesaid, at the city of Philadelphia aforesaid, unlawfully *perniciously*\*, and deceitfully designing and intending to form and unite themselves into a club and combination, and to make and ordain unlawful and arbitrary bye laws, rules and orders amongst themselves, and thereby to govern themselves and other artificers, workmen and journeymen in the art and occupation of a cordwainer, and unlawfully and unjustly to exact great sums of money by means thereof on the day and year aforesaid, at the city of Philadelphia aforesaid, did unlawfully assemble and meet together, and being so unlawfully assembled and met together,

\* *Query.* The legal intendment of that word

did then and there unjustly and corruptly conspire, combine, confederate, and agree together that none of them the said conspirators, after the said first day of November, one thousand eight hundred and five, would work for any master or person whatever, who should employ any artificer, workman or journeyman, in the said art and occupation of a cordwainer, or other person who should thereafter infringe or break any or either of the said unlawful rules, orders or bye laws, and that they would by threats and menaces and other injuries, prevent any other workmen and journeymen from working for such master, and the said George Pullis, Peter Pollen, John Harket, John Hepburn, Underl Barnes, John Dubois, George Keimer and George Snyder, in pursuance of the said unlawful conspiracy, combination, and agreement, refused to work at the usual rates and prices given to artificers, workmen and journeymen in the said art and occupation of a cordwainer, and still do, and each of them doth refuse to work and labour at the usual rates and prices accustomed to be given to them, the said George Pullis, Peter Pollin, John Harket, John Hepburn, Underl Barnes, John Dubois, George Keimer and George Snyder, and other artificers, workmen and journeymen in the said art and occupation of a cordwainer, to the great damage and prejudice of the masters employing them in the said art and occupation of a cordwainer, and of the citizens of the commonwealth generally, and to the great damage and prejudice of other artificers and journeymen in the said art and occupation of a cordwainer, to the evil example of others, and against the peace and dignity of the commonwealth of Pennsylvania.

For the attorney general.

JOS. REED.

*Witnesses annexed to the bill of Indictment.*

Lewis Ryan, sworn.  
John Bedford, do.  
Job Harrison, do.  
James Comyns, do.

Anthony Bennet, sworn,  
Andrew Dunlap, do.  
George Kemble, affirmed.

This prosecution has been commenced, not from any private pique, or personal resentment, but solely, with a view, to promote the common good of the community: and to prevent in future the pernicious combinations, of misguided men, to effect purposes not only injurious to themselves, but mischievous to society. Yet infinite pains have been taken to represent this prosecution, as founded in very improper motives. Not only in private conversation, and in public taverns, but even the press has been employed in the work of misrepresentations.

The newspaper called the Aurora, has teemed with false representations and statements of this transaction; and the most insolent abuse of the parties, who have brought it before this tribunal, with a view (if not with the declared intention), to poison the public mind, and obstruct the pure streams of justice flowing from the established courts of law. Yet we trust, we shall be enabled to counteract the nefarious effects, the publications alluded to were calculated to produce, by a fair and candid exposure of all the circumstances. When the true nature of the case shall be explained, and the plain narrative of the facts, shall be laid before you gentlemen of the jury, we feel confident that you will not be biassed by newspaper attempts, to delude and mislead you.

It has been a common observation that newspaper accounts, of the proceedings in our courts of law, are filled with mistakes and misrepresentations, the publications alluded to are in conformity to this general character, and marks the ignorance or wickedness which gave them birth.

Let it be well understood that the present action, is not intended to introduce the doctrine, that a man is not at liberty to fix any price whatsoever upon his own labour: we disclaim the idea, in the most unqualified terms, we declare that every man, has a right to fix any price upon his commodities or his labour which he deems proper. We have no design to prevent him. We disclaim any such design. If any one of the defendants, had thought proper to charge 100\$ for making a pair of boots, nobody would interfere, if he could get his employer to give it, or could compel the payment. He would have a legal right to do so, our complaint is not of that kind.



Our position is, that no man is at liberty to combine, conspire, confederate, and unlawfully agree to regulate the whole body of workmen in the city. The defendants are not indicted for regulating their own individual wages, but for undertaking by a combination, to regulate the price of the labour of others as well as their own.

It must be known to you, that every society of people are affected by such private confederacies: that they are injurious to the public good and against the public interest. The law therefore forbids conspiracies of every kind which puts in jeopardy the interest and well being of the community; what may be lawful in an individual, may be criminal in a number of individuals combined, with a view to carry it into effect. The law does not permit any body of men to conspire or to undertake to do any act injurious to the general welfare. An act of conspiracy is an offence against the laws of this country, and that is the charge brought against their defendants, in the first count of the indictment.

(Mr. H. read the first count and then proceeded.)

It is here stated that this confederacy, was, not only injurious to the community generally, but also, to other artificers and journeymen cordwainers, it is not alleged to be against the masters, for they are in no wise concerned, it is against such part of the fellow craft as do not wish to submit to the tyranny of the few.

(Mr. H. here read the remainder of the indictment.)

You will also please to observe that this body of journeymen are not an *incorporated society* whatever may have been represented out of doors on that head; neither are they a society instituted for benevolent purposes. But merely a society for compelling by the most arbitrary and malignant means, the whole body of the journeymen to submit to their rules and regulations; it is not confined even to the members of the society, it reaches every individual of the trade, whether journeymen or master. It will appear, from the evidence to be adduced before you, to spread to an extent of which



you cannot as yet form any idea. You will find that they not only determine the price of labour for themselves, but compel every one to demand that price and receive no other, they refuse to hold communion with any person who shall disobey their mandates, in fine, they regulate the whole trade under the most dreadful pains and penalties, such I believe as never was heard of in this or any other civilized country.

There may be a number of young single-men, who may stand out for the wages required, but there are others with families who cannot subsist without work; these men are compelled to abstain from their employments, and are reduced to the extreme of misery, by the tyranny of the others, we shall shew you, that some journeymen, with families, have been forbid to work at prices with which they were perfectly satisfied, and thereby been brought into deep distress.

We shall shew you the nature of the pains and penalties they affix to disobedience; we shall also shew the mode by which they compel men to join their society, and the fetters with which they afterwards bind them. A journeyman arriving from Europe, or any part of the United States. An apprentice who has served..... his time, must join the association, or be shut out from every shop in the city, if he presumes to work at his own price. Nay every master shoemaker, must decline to employ such journeyman or his shop will be abandoned, by all the other workmen. A master who employs fifteen, or twenty hands is called upon to discharge the journeyman who is not a member of the body, if he refuses they all leave him whatever may be the situation of his business: this compulsion from its nature seldom fails. If the master discharges the non conformists, and he gets employed at another shop, the body pursue him, and order the new master to drive him away, and threaten in case of refusal that they will draw of all the members of the society, and so on, until the persecuted man either joins their body or is driven from the city. The injury to the community is a very serious evil and demands at your hands to be redressed.

This is the chief charge in the indictment; and you now see that the action is instituted to maintain the cause of liberty and repress that of licentiousness. It is to se-

cure the rights of each individual to obtain and enjoy the price he fixes upon his own labour.

In the progress of this case the Evidence, the principles on which the prosecution is conducted, and the law arising thereon, will respectively be laid before you; and you will ultimately decide for the prosecution or the defendants as shall in your judgment comport with the justice of the case. I have thought it necessary to say thus much that you might not suppose, we are attempting to deprive any man of his constitutional rights and priviledges as has been represented. I shall now proceed to call witnesses to establish the facts I have stated.



*Job Harrison, sworn*

*Question*, by Mr. Hopkinson, are you a journeyman Shoemaker?

*A.* Yes.

*Q.* do you know whether the Journeymen cordwainers in this city, are associated together for particular purposes, and do you belong to them?

*A.* Yes they are formed into a society, and I belong to them.

*Q.* Does George Pullis, belong to the association?

*A.* Yes.

*Q.* Does P. Pollen?

*A.* I do not know that he does.

*Q.* Does Harket?

*A.* Yes.

*Q.* Does Hepburn?

*A.* I Dont know him by name.

*Q.* Is Barnes one?

*A.* Yes.

*Q.* Are Dubois, and Keimer, members?

*A.* Yes.

*Q.* Is George Snyder?

*A.* I do not know.

MR. HOPKINSON.

Please to go on and explain what you know of the objects of that association and state such facts as you know of their conduct.

*Job Harrison.* The objects as far as I know, as a Shoemaker of the society, was to associate together for the purpose of supporting the present wages, and what wages they might see proper to ask in future.

Q. Did you join the association of your own free will, or were you compelled to join it?

A. I was notified that there was such a society, when in 1794 I came into this Country, from England: I had tarried some considerable time in the city before I removed up to this side of Germantown at the place of .....the Calico printer. The wages were then at that time 6s. a pair to the journeymen: I tarried at Germantown six or seven weeks; during which time I worked for Mr. Bedford, one time when I came in, (for I used to fetch in my work once a week), it was on Saturday, (for I always came in on Saturday), Mr. Bedford, told me that the wages had been raised, to I forget whether a dollar a pair or something under, but, he gave me what they were raised to, for my work. At this time I knew none of the journeymen, in the city, nor that there was any body of them associated. In the course of a little time I came into the city again, and I was told the wages were raised again; if they were not at the first time raised to a dollar, they were raised immediately after, and he told me of this rise again, and gave me the wages that had been asked. In a few weeks, some of the journeymen, who knew me, called upon me and requested me to join the body. It might be five or six weeks after the rise of wages.

Q. Do you know who they were that called on you?

A. I do not, I believe they knew me, when I did not know them, for I had been at the shop, several times they notified me that it was my duty to come to the body. I told them I knew nothing about the body, I did not know there was such a thing. They told me if I did not come to the body, I was liable to be *scabb'd*; I did not know at that time what it was to be *scabb'd*;



but some of the men explained it, and I told them that I was willing to be as good a member of their body as any other man.

MR. RECORDER.

Q. How did they explain themselves.

A. Their meaning was, that if I did not join the body, no man would set upon the seat where I worked; that they would neither board or work where I was unless I joined. By a seat I mean they would not work in the same shop, nor board or lodge in the same house, nor would they work at all for the same employer. I was a man with a large family, and wished to conform to the laws and be a good member. A notification came shortly after from the Secretary, that I must attend the body-meeting at a certain time, and I accordingly did so: And then I learned the nature of the institution. I had another notification after, which was signed by, both the chairman and secretary but I have not kept it.

MR. HOPKINSON.

Q. Did you ever fall under the displeasure of the body, and what was their conduct towards you.

A. After I had become a member I was as willing as any one to support the body. I had been with them a considerable time when in the year 1799 or '98 I do not recollect exactly...but I should first observe, that, I always worked upon shoes, for Mr. Bedford, I had not long worked for him before I got on to light dress-shoes. He told me if he could make some light dress shoes after the London fashion, he would pay extra wages for them. I tried to imitate the London fine shoes, but I could not imitate them exactly, yet I did the best I could, and he told me that they deserved six pence more than the common wages; as I continued on this light work my hand got better in, and he told me if I would side line them with silk, he would give me six pence a pair more; this was a shilling advance. He told me if I would endeavour to make them lighter still, so as to come nearer to the London dress-shoes, accordingly I tried and found that I could now imitate them tolerably well, and he was satisfied to give me 9s. a pair, if I did them no worse.



In a little time there came a turn-out to raise the wages upon boots : knowing I had my full terms for my own work and that I had no interest in the turn-out upon boots, that I have every thing to lose but nothing to gain ; I remonstrated with the society at large, of which I was still a member. I stated that they ought not to include me with them, in the turn-out, as I worked altogether upon shoes, and their measure, was, to raise the wages on boots. I mentioned that I had a sick wife and a large young family, and that, I knew I was not able to stand it: they would grant me no quarters at all, but I must turn-out. All the remonstrances I could make were of no use. I must turn-out ; unless my employer would pay their price for making boots I must refuse to make shoes. At that time I was from hand to mouth, and in debt, owing to the sickness of my family, and market work was only from 3s. to 3s. 6d. per pair.

I concluded at that time I would turn a *scab*, unknown to them, and I would continue my work and not let them know of it.

I did not desire more wages than I then got, more could not be looked for, nor more could not be given.

I had a neighbour, who I was acquainted with, and thought a good deal of, I knew I could not deceive him, for he knew Bedfords work, as well as I did myself, and he was frequently to see me, and must have observed the work I was upon. He was a shoemaker and upon the turn-out. I said to him Swain, you know my circumstances, my family must perish, or go to the bettering house, unless I continue my work. He said he knew my case was desperate, but a man had better make any sacrifice than turn a *scab*, at that time. I reasoned with him as I had done to the body, that my turning out would be of no advantage to them, but certain ruin to myself, but he was as unreasonable as they had been, and would take no apology for my conduct.

MR. RECORDER.

How many persons were at the meeting when you remonstrated against, being compelled to join the turn out in 1799.

A. Perhaps one hundred. The body was composed of upwards of one hundred. The names were called over but the number present are not mentioned.

John M'Curdy, John Waltar, and one Cooke, were a *tramping committee*, that I know....there business was to watch the *fers* that they did not *scab* it. They go round every day, to see that the *fers* are honest to the cause; I was a *scab* myself, yet I was upon the committee to go round and watch other *scabs*, but then the members did not know I was a *scab* at the time. And we were obliged to serve on this Committee or pay a fine, we had no compensation that I recollect, we served for the good of the cause and I think the *tramping committee* were changed every day by the body. I had the extent of my wages during the whole time. I am speaking of the turn-out in 1799.

When the *tramping committee* came round they went to Swain, and he informed them that I was *scabbing* it: to deceive them I had got a side of leather and a skin or two to make shoes of, as a pretence of working for myself, as they must know I should be in want of money; but M'Curdy was too deep for me, for he knew Bedfords work, they pinned me so close that I could not get over it, and was forced to confess, at last I got angry and ordered them out of the house and told them I would *scab* it whatever consequences might follow. The body after this thought it requisite to take one man instead of three for the *tramping committee* and they paid him: they took one Nelson for the business. He had nobody but himself when he called upon me the day after. I told him I was *scabbing* of it, he replied I dont believe you. Depend upon it I am, he still seemed as if he did not believe me, he went away and called again the next day. I said so you will come again for all I tell you I am *scabbing* of it, and depend upon it I am: he went away and called the third day and he might see if he was not determined to doubt....for in Bedford's shoes there is the name of the customer, if it is bespoke work, or if it is shop work there is the number of the pair.

I attended the meeting when Dobbin's case came before the body, which so hurt my feelings that I was determined ever after to do that openly which I had done before secretly. Dobbin was in great distress, he

had lost his wife, and had a large family of small children to maintain ; he was working at soldiers work for his employer, but was ordered to stop till the meeting : at the meeting he solicited to be allowed to work, as he could not otherwise support his children, the motion was rejected.

MR. RODNEY.

Interrupted and enquired if this matter was relative to the present case which was an action against the defendant for an occurrence that took place last fall.

MR. HOPKINSON.

Said if they let the witness proceed, the relation would soon be perceived. Was Dubois a member when Dobbins asked leave to work ?

MR. RODNEY.

What does that question go to ?

*Job Harrison.* Dubois was a member, and when Dobbins had been refused leave to work, it was added that, he should not even make candle boxes for Case, his employer, because he would not pay the price required ; Dobbins appeared in great distress, he cried and it almost broke my heart. I said then to several members, ' now I will turn a *scab*, at the same time I was a *scab* but they did not know it.

As soon as the *turn-out* was over, in which the journeymen succeeded, they notified Mr. Bedford that he must discharge his *scabs*, or they would not work for him ; they knew S. Logan and me to be *scabs* and unless we were discharged from our seats none of the body would work for him. Mr. Bedford said he would do no such thing, he would never discharge his men whilst he was satisfied with their conduct. When I came in he told me of the notification, and I expected he would *knock* me off, and I was afraid if he dismissed me that I could not get another seat in the city, for the next employer would be under the necessity of discharging me likewise. He told me I need not make myself uneasy for



he would not discharge me, let the consequence be what it might, that we should sink or swim together, if they drive me out of the trade I will turn my shop into a dry good store. In a little time after this his shop was *scabbed*, and all the members of the body left him except Logan and myself and two or three more, they did not care about the others so as they could punish Logan and me. Mr. Bedford said he did not know what to do on the occasion, for at that time he employed from fifteen to twenty and twenty four journeymen.

One Saturday night they had all left him, when he said to Logan and me. I dont know what the devil I am to do, they will ruin me in the end, for they care for nobody else. I wish you would go to the body and pay a fine if not very large, in order to set the shop free once more.

Logan and me consulted, and agreed together, that if the body would accept a fine, as far as eight dollars, we would pay it and make an acknowledgment, but we pledged our words that we would not pay any more, by doing this we should liberate the shop and ourselves, and become again members of the body: accordingly at the next meeting we waited on the body, we notified some of the members we were below and wished to have a hearing. Accordingly the body was notified that we were below and wished to know the fine they would lay upon us, in order that we might again become members and liberate the shop; the members told us on their return that the sense of the body had been taken and that they fined me twenty dollars, for being a hypocrite, tho' my work did not belong to what they had been contending for: they fined Logan but eighteen dollars although he was a boot-maker and consequently interested in the event. This decision irritated me worse than ever. It was like throwing coals of fire in my face. However the members returned to the body and told them we were ready to receive their terms if they were merciful and would receive a moderate fine, they reduced me to eighteen dollars, and at length to twelve dollars, but that was too much, they know I am a well wisher to the body but no enemy to myself, when they offered by their deputation to take twelve dollars, Logan and me consulted and offered them eight dollars a piece which,



we were willing to pay, they had no power of attending to this offer without the concurrence of the body and they refused it.

One of the jury asked a question not heard by the Reporter.

A. I did not think they had a right to sacrifice the interest of the body, for so friendly am I to the institution that if it was broke down to day I would endeavour to raise it up again to-morrow. Logan and myself then came away but told them first we would never offer them eight dollars again.

Mr. Bedford's shop was under *scab* for a year or a year and half, during this time Logan set up for himself and I was left alone on the seat. I thought to be sure that they would now reach me, that Mr. Bedford would not any longer defend me, as it would be sacrificing himself I felt broken hearted and much cast down, I asked him if he would not be forced to give me up, he told me he would not and I now believe he would have suffered to be driven out of the trade before he would have abandoned me. It lasted in this way for eighteen months, soon after, the last sickness, but one, commenced, I went to Trenton to where Mr. Bedford had removed his shop I think it was in 1802, I became acquainted there with Dempsey the secretary, when I first fell in company with him he would not speak to me because he knew I was a *scab*, but as I fell often in company with him he could not avoid saying something; and one day he asked me what the devil was the reason I was such a notorious *scab*. I reasoned with him about the justness of my case and urged every thing I had said before, both as to my own and Dobbin's case, he seemed to be gained over; he was not a member at the time I had been *scabbed*, all he knew of it was by hearsay, he soon became friendly and he asked me if he could break the matter to the body whether I would become a member again, I readily agreed for I knew well the difficulty I had been long labouring under, if I once lost my seat at Mr. Bedford's, I should be driven to market work by which I could not make a living. He told me he would try to bring it about, and asked me how much I would pay. I told him I had offered eight dollars and it had been refused, he asked would I give five dollars I said I was

not able, but if able I would not, all I will pay shall be some trifling acknowledgment for transgressing the law.

After that I met him in front street he asked me again if I would pay five dollars, I told him I cared nothing about it, I will pay nothing but a trifling acknowledgment, tho' I was desirous of getting into the body again, in which case I was determined never to be a refractory member, yet I would not pay a heavy fine. He promised to use his influence that I should pay little or nothing; a few days after two men came to me to require me to attend a meeting on the next body-night; I attended accordingly and a deputation from the body composed of three members of whom Murphy was one, met me and Casey another *scab*, they went into a private room and after consulting some time, they asked if we were willing to pay eight dollars each. I told them they were making fun of me, and that I would go home about my business. They begged I would not be hasty I did not wish to leave them for I was as willing again to become a member as they could be for me. They asked me if I would pay four dollars in four monthly payments. We agreed to this and then we went to the body, the proposition was put to the vote and carried by a large majority, we agreed to pay it and thereupon became members again. In this transaction I must acknowledge that I cared more for myself than I did for Mr. Bedford, whose shop however thereby became free, I wished it to be so though I must acknowledge that I could get work no where else if Mr. Bedford had turned me off, or I should have been obliged to take such price as he might give me, even if it had been 5s. a pair, but he never offered me less than the full wages nor never docked me of a cent. The money has all been paid eighteen months since, but I felt myself after all but as a *scabbed sheep* and visit the body as seldom as possible missing three nights out of four: for I know they are not pleased with me to this hour.

I had not been a member more than a year when last fall there was a turn-out again. I was notified to attend and I must either attend or pay a smart fine, I attended, there was much discussion and debate, many of the best workmen were satisfied with their wages and opposed

the turn-out; it was just after the fever had subsided and the journeymen were generally scarce of money. Mr. Dubois and Gagen were satisfied with the present wages and opposed the turn-out with all their abilities; but on the question, it was carried against them, by a small majority....I think about eight or ten. Upon which the rest were to submit, or turn *scabs* as I did before.

They make no discrimination in the rate of wages between a good and bad workman. A meeting was called for the next night, but as I did not think it could be over-ruled, I did not go. Mr. Gagen again, I understood, used all his endeavours to get rid of the turn-out, but the majority was against him. A notification was then directed to be sent to the employers, and two men were appointed to each shop to notice them accordingly. When Mr. Bedford was first called on, he said he would give the price, and if they asked the full price of the boots he would sooner give it than be reduced to the perplexity he had suffered before....said he, I will have no more bother about it, for I have had enough before. After that some of the employers met together to consider if they would give it, and determined they would not; whereupon Mr. Bedford changed his mind, and would not give it either. For my own part, I wished the men to get their wages, for if they did not get it I should be half ruined, if required again to turn out; but it could not affect me if the measure was confined to boots alone....there was a shoeman near me in the meeting, who asked me to move an advance on shoes: I told him if shoes were raised to 9s. I should not be benefitted for I had that price already, but you know it cannot be given only on customers work. If I was to make the motion, the body of bootmakers would soon shut my mouth, by telling me I could not want it as I have 9s. already. Some persons, however, speaking about the price of shoes, others said, what have we to do with you? To which the first replied, then we have nothing to do with you and will pursue our own course.

Sixty persons were pledged to this last turn out: although Dubois and Gagen opposed the turn out, when the employers refused to give the price, they became the leading characters in conducting the business and supporting it. The turn out continued about five



or six weeks, during this time I lived by *cobbling*, for I made but three pair of shoes, and those I had in the house at the time; these three pair I did not carry in till the turn-out was over, because I was determined not to be a *scab* this time.

[Some noise being heard in court at this moment, Mr. Recorder asked who it was made that noise?

*Mr. Ryan*, pointing to a person just behind him, said it was him, and on being asked by Mr. Recorder, what the person said, Mr. Ryan replied....“ A *scab* is a shelter for lice.”

MR. RECORDER

Directed Mr. Ryan to be sworn, which being done, he declared that he heard George Alcorn say, a *scab* is a shelter for lice, in a distinct tone of voice, there was some little addition muttered in such a manner that he could not understand it.

After a short consultation on the bench,

MR. RECORDER said,

George Alcorn, for this contempt of court in interrupting a witness, the court fine you ten dollars, and order you to pay the money immediately or be committed. The money was paid immediately.]

MR. RECORDER.

The witness will proceed.

*Job Harrison*. I was soon placed in a like awkward predicament to that in which I had been placed before. I had only, as it were, just become a member when a fresh turn-out took place. I attended the shop meeting and stated the hardship of my case....I had a wife and six children dependant on the work of my hands for their support, and I could not get half a living by market work. They told me there was money enough in the funds to support those members who wanted support, and they agreed that I should be allowed half a dollar a week for each child, half a dollar a week for my wife, and half a dollar for myself, which brought my compensation to four dollars per week; this was mentioned to me by Dubois.



## MR. HOPKINSON.

How much could you earn in a week?

A. It might average six or seven, sometimes I got nine or ten dollars, but I was not able to stick equally close at all times. I did some work during this turn out for Mr. Hays, the engraver, perhaps six pair. I mended those of my own family, but the three pair I had of Mr. Bedford I did not take home, I would not go nigh the shop lest it should be thought I turned a *scab*. Though I did not get half wages, I was obliged to be out every other night, which encreased the expenditure of my money: for I was obliged to go to the meeting or pay a quarter of a dollar, and if I went, it would cost me an elevenpenny bit; so that I was losing little by little all the time. I think I was out of work rather better than six weeks.

Q. Did I understand you to be satisfied all this time with the wages you had been accustomed to receive from Mr. Bedford, and yet they compelled you to turn out?

A. I had as much as any man, and I could not expect more: but they did not compel me to turn out, any other way than by making a *scab* of me, and I thought I should be a great fool to subject myself to the like inconvenience I had before experienced, or be obliged to pay a heavy fine. I was appointed president of the shop meetings, and attended the others; but during the whole time I kept complaining that they made me no compensation, while they would get their compensation hereafter, by the rise of their wages, and I could not expect a cent advance on mine.

At length I received a note from Mr. Bedford, informing me that if I did not turn into work I should hereafter have no more than common wages. I shewed Hays this note, and he advised me to wait a day or two and try if the body would not grant me liberty to go to work; there was no money to compensate me, but they promised to compensate me next Saturday. He asked me how much I wanted? I answered, if they would give me twelve dollars ready money, I would be content to receive it as a full compensation. The next meeting I attended, for I understood they had collected sums of money to meet the expences of this prosecution. I was

not admitted into the room, but I notified them I was attending. I stopped some time with Dubois who put a half eagle into my hand, and said he was much obliged for my forbearance, that he would soon give me the rest. Since which I have never spoke to any of them but Mr. Hay. I got twenty dollars of Mr. Bedford on a settlement just before, otherwise I could not have continued to stand the turn-out....and ten dollars of that money I lent the body to give Cummings, to prevent him from going to work.

I wished and pressed for my compensation although I had money....yet they would not give it me, because I would not say I was in absolute want.

The court adjourned till afternoon.

*Eadem die.*

*Mr. Job Harrison, cross examined.*

Q. When did you become a member of that society?

A. Sometime in 1794.

Q. Were the present defendants members of the society at the time, or was any one of them then a member?

A. I remember Mr. Dubois was one, but do not remember any other.

Q. You have given an account of some of the articles of the society; I wish you to give an account of the whole of them?

A. I don't know them, only as they were read from time to time in the meetings.

Q. You gave testimony of some, I enquire which you particularly recollect?

A. I recollect that there is now a particular article which declares, if any man turns *scab* he shall be fined sixteen dollars. I speak of the present, for there was a revision of the constitution while I was excluded.

Q. What are the objects of the society?

A. I don't pretend to know all the articles in the books, but I know the object was to support the price of wages, and the *scab* law was a stimulus to the members to support what they undertook; there must be a stimulus in every society to keep the members to

their common engagements. In 1799 there was a turn-out, and I thought the journeymen were entitled to a rise of wages, as every thing else was rising. I did not see any impropriety in the turn-out at that time.

Q. Are you sure that the object of the turn-out at the time you speak of, was an advance of wages?

A. I am not sure, but I rather believe it was.

[A little disturbance took place among the audience, who were numerous, but being settled after a short examination into the cause by the court, the trial proceeded.]

*Job Harrison* continued. This I knew before the first turn out; Mr. Bedford had raised my wages to 9s. a pair for shoes, when the settled price was 7s. 6d.: some had 8s.: some got but five elevenpenny bits. There is a difference between *order* work, which is the lowest price, and *shop* and *bespoke* work; one will sell only for one dollar and eighty cents, the other for two dollars and seventy-five cents, as I have heard say.

Q. Did any other person make *bespoke* work of the same kind for Mr. Bedford?

A. I do not know that they did, it was not my business to enquire; he regularly paid me for what I did, and we were mutually contented. I do not know all he employed, although I might know here and there a man. I knew nothing of the business of his shop, living better than a mile from him; I take nine, ten, or twelve pair of shoes at a time, and call to return them when finished: or they send up for them if wanted earlier.

Q. Was there any turn-out from 1799 to 1805?

A. If there was, it was only for a day or two, and the employers gave the wages....there was none contested.

Q. Can you be sure there was no turn-out between those periods?

A. No: but I know I never turned out.

Q. Was there any advance in the prices of the articles themselves in that time?

A. I don't know: I believe Mr. Bedford sells his *dress* shoes now at the same price; I know he gives me the same wages.

Q. What was the cause of the last turn-out?

A. The journeymen thought it necessary to have an advance of wages.



Q. Had there been any advance on the price of boots before this?

A. I don't know that there was, generally; but I believe there was on what are called *back-straps* and *fancy-tops*. I know nothing of this but as I heard in the body, for Gagen said, as those two kinds of boots fetched a good price, the employers might give an advance in the wages on them. It was replied, that Gagen worked only in those sorts, and therefore was in favour of the encrease upon them.

Q. Do you know whether this change in the fashion of boots was introduced by the masters or journeymen?

A. I do not.

Q. Did they *scab* any shops the last turn-out?

A. No: there was a division in the body, and they were forced to go to work at the old price; therefore it was impossible to *scab* any one: they did not gain the cause; they stood it out six or seven weeks, but they found it impossible to get their wages advanced, and they went to work again.

Q. Did you stand out as long as you could?

A. Yes, and longer than I could afford.

Q. Did you advance any money to the body, to enable them to stand out?

A. Yes: I told you before that I gave ten dollars out of twenty I had received of Mr. Bedford, to enable them to stand out.

Q. At what time did you make this advance?

A. I can't tell, but I believe about a week before the close. I was a well-wisher to the cause, and I wished them to get what they contended for. I thought they were right. If they thought it right to ask ten dollars a pair for boots (of which work though, I am not a competent judge) I should wish them to get it.

Q. Do you work at the same price as formerly?

A. Yes.

Q. Was you stopped from working at the last turn-out?

A. Yes: I was stopped for six weeks, and many others were stopped likewise.

Q. But you were at liberty to make market work, or any other you could get, except of master workmen?

A. Yes.

*One of the jury.* Do I understand you right when you say you lent money to the body, to support the cause of the turn-out?

*A.* Yes, I said so.

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*Anthony Bennet, sworn.*

*Q.* Do you belong to the society?

*A.* No. I did belong to it formerly.

*Q.* Did you join it voluntarily, or was you compelled?

*A.* I used to *snug it*. But I rather think I was compelled, it is about eight years ago and I was very young at the time.

*Q.* Tell the means the society take to compel persons to come under their regulations?

*A.* They are very arbitrary in their rules and regulations in regard to the *scab law*.

*Q.* What is the *scab law*?

*A.* Why, that I shall not do as I like.

*Q.* If you are satisfied with the wages you receive, would they nevertheless compel you to come into their terms; and if you refuse what would be the consequences?

*A.* Kill me.

*Q.* You say they would kill you, how do you know it?

*A.* They have threatened to do so. Not to my face, but according to what I have understood.

*Mr. Franklin.* This is no testimony, it is mere hearsay.

*Q.* Can they compel a person to leave a shop if they do not join the body?

*A.* Why, yes; they will endeavour to compel you, but I don't say they do. They will punish the person by preventing his getting work from any employer in the city.

*Q.* You say you belonged to the society, how long is it since you left it, or was you turned out of it?

*A.* I cannot mention the day, but it was since the last turn-out, which was in October or November last.

*Q.* What were the prices you meant to obtain at the last turn out?

Q. We will show the court that, in a written notice served upon the employers. They will prevent those who do not join them from getting any employment in the city?

A. It is a settled principle.

—•—

*James Cummings, sworn.*

Q. Are you a journeyman shoemaker, and do you belong to the body?

A. I am a journeymen shoemaker, and belonged to the body at the last turn-out, but not now. I left it because I would not comply with their request. I did not know much of their rules and regulations; but when the turn-out first began, I turned out with the rest. I was turned off of work for six weeks, though I was satisfied with the wages I had received; but I was obliged to give up at the end of six weeks.

George Pullis, Peter Pollen, John Harket, John Hepburn, Underl Barnes, John Dubois, George Keimer and George Snyder, all belonged to the society at the last turn-out. Forty members have left the society since.

Q. Tell by what means they force persons to comply with the rules of the society?

A. By the *scab law*, which is a written law. They take means to prevent the employers from continuing men on their seats, who work under price. They give the poor, money to keep them from work. Suppose you was *scabb'd*, and working in Mr. Ryan's shop, all the members would leave him, if they were fifteen or twenty, unless he turned off the *scab*.

Q. Do you know of an instance where they compelled an employer to turn off his workmen?

A. I do not know that any was compelled at the last turn-out, and the other is such a long time since, that I do not remember it.

Q. Do you know of any instance, in which a journeyman has been forced to pay a fine, or been compelled to join the body?

A. If a journeyman comes to town, and does not join the body, they will not permit him to work at any shop in the city.



Q. Recollect, if this instrument of force, was not turned against Crumbach?

A. I recollect that he had to pay a fine, because he worked for Mr. Montgomery; they went to Montgomery, and told him to turn off Crumbach, or they would all leave his shop; the consequence was, that Crumbach had to pay a fine of twelve dollars. I cannot recollect when this was, but I believe one or two years ago, perhaps it is better than two years.

Q. How many went with this order to Montgomery?

A. Five or six of the members.

Q. Have you been paid money by the society, to induce you to hold out?

A. Yes, I have.

Q. Was such money given to you, to enable you to subsist your family, or to induce you to stand out?

A. It was to keep me from working, for if they had not given me the money, I should have been compelled to go to work for a living.

*Cross Examination.*

Q. How much money did you receive?

A. Sixteen dollars, at four dollars per week.

Q. Who bears the expences of the society?

A. I do not know: I received the money of Gerin.

Q. Did you work during the time?

A. Yes, I worked when I could catch it. I made, of shoes, three pair for White, four for Wild, three for Bush; I could not live unless I got something to do.

Q. Did you vote for the turn-out?

A. No.

Q. Who do you work for now?

A. Mr. Bedford.

Q. Was any person *scabbed* the last turn-out?

A. No.

Q. *By a juror.* Was the young man, (Crumbach) who came to town, and worked, obliged to quit; or was Mr. Montgomery's shop *scabbed*?

A. He was discharged by his employer after the application of the body; the shop was not *scabbed*.

Q. Then a person has a right to be employed, when he comes to town, without joining the society?

*A.* I believe they have a right to come forward, as soon as they hear of the society.

*Q.* When a journeyman comes to town, or an apprentice is free, do they not compel him to join the society?

*A.* Yes, he must come to them, if he means to work in the city.

*Q.* Are the written rules hung up in the society's room?

*A.* They are written in a book, and when a person becomes a member, the secretary writes his name down in the book.

*Q.* When you became a member, did you make a promise to conform to the rules?

*A.* I did nothing but pay my entrance money, and hear the rules read.

*Q.* Was you at liberty to depart from the society?

*A.* Not if I expected to work in town.

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*William Forgrave, sworn.*

*Q.* State what you know of the cause now trying?

*A.* I am a journeyman shoemaker: in the year 1800 I became a member of the society, the price of admission is elevenpence, my name was set down, and the articles were read over; they are generally read over every night. If you do not abide by them, or work under wages, they tell the employers to discharge you, or they will leave him; in this manner you are driven from shop to shop, till you are driven out of all manner of work, that is of any profit. I have known instances of this kind. A notice was sent by the secretary, by order of the society, to discharge a particular man, or they all would leave him; such were sent to William M'Culley and Joseph Baldwin. I was myself one of the committee to hunt up cases of the kind; we reported one at Baldwin's, I think about four years ago, who did not come forward and join, and was therefore discharged. The case at M'Culley's was that of a man who was not a good workman, he had neglected to attend the meeting as enjoined by the articles; which is, that if a member does not attend for three nights, he is to be

noticed the fourth; when, if he does not appear, he is struck off, and the employer is informed not to employ him any longer, otherwise the rest will leave his shop.

The name of a *scab* is very dangerous; men of this description have been hurt when out at nights. I myself have been threatened, for working at wages with which I was satisfied. I was afraid of going near any of the body: I have seen them twisting and making wry faces at me, and heard two men call out *scab*, as I passed by. I was obliged to join, for fear of personal injury, and to stop two apprentices who worked for Mr. Logan, as well as myself; and confined to market work and *cobbling* for a livelihood. This last turn-out I was six weeks kept from my regular employment, through fear of the society. I went to work before the turn-out began, after I came to town, I think about the 20th of October.

—+—

*Samuel Logan, sworn.*

I became a member of the society in 1792, and continued in it until it was dissolved some time in the same year. They laid restriction on the members, which I thought arbitrary, and opposed them. There was an affirmation introduced, as solemn as the oath I have just now taken. It was that I will support such and such wages, to the utmost of my power &c. They had to repeat this after the secretary, I know a number, to work under the wages, they had solemnly promised to support, especially such as were in a situation similar to Harrison. I therefore requested a repeal of this affirmation, which broke up the society; so that we never met till 1798 after the fever, then about fifteen of those who had first returned or remained, called a meeting at Cross's; to begin the society again for the support of wages; as soon as we could agree upon the increase, we raised our wages, we made the demand and we got it. In about six months, we made another raise, which we also got. In may 1796 we had another turn-out, and then also we got the wages. In 1797 I left the city and went to Baltimore. I returned third of August in 1798, the people had generally left the city, and I went to reside



at Frankford, and worked for Mr. Bedford, who gave me money enough to support me, till we returned to the city. I understood, that the journeymen then proposed another turn-out for more wages; I thought it wrong, for the wages were as high as the work would bear. I urged them to consider the condition of the married men, who returned much distressed to town, in consequence of the fever. Mr. Dubois had informed me of this attempt, and opposed it warmly, but it was carried against him by a small majority. Endeavours were afterwards made to alter the decision, but no distresses that were represented to them, would induce the society to relax. I was however by my wants, and the situation of my family, obliged to continue to work. I was therefore considered an unlawful member, and they laid a fine on me of fifteen or twenty dollars. I conversed with a member, on the peculiar hardship of my case, he acknowledged the hardship, but could not help it as the article run so: afterward when they got their wages, they declared Mr. Bedford's a *scabbed shop*; he had before that, generally employed about twenty journeymen, and now he lost all but four or five. His shop remained in this situation about two years; it might be longer, but not less. I found Mr. Bedford was under a great loss, by supporting Harrison and me; we proposed to return to the society and pay a fine of eight or ten dollars; we went accordingly and made the offer, but it was refused. I have been some time in business for myself, and can now form a pretty good opinion of Mr. Bedford's loss; it was a considerable sum upon ten or fifteen men's work.

Q. Did the society compel members to join?

A. When I belonged to them they had such a rule; when a journeyman came from New-York or Baltimore, a notice was sent to him, at the house he lived at, that he must come forward and join the society; if he did not his employer was called upon to turn him off; and none of the members would board at the same house with him.

This was an article when I belonged to the society, I cannot say what the articles are now, this was then an established rule. I received a notice myself, for having neglected going to the society for nine months in 1797.

In my case they did not proceed conformably to the articles; and therefore I got in again by paying entrance money, instead of a dollar and a half fine.

In 1799 when the fever broke out, I was still considered as an unlawful member. Mr. Bedford went to Germantown, and one Sunday afternoon I walked with him to the falls of Schuylkill, I perceived some of the body there, and they abused me; one thoughtless young chap, called me a *scab*, there were two of them, I checked him, and Mr. Bedford kept off one, while I flogged the other, the next day he took out a state warrant for us both, and as the court was setting at Frankford, where I could not attend, I finally made it up. I have also been tantalized in the streets, as I have passed by them, on account of my being a *scab*.

Q. Was this done by any of the defendants?

A. No, but it was by members of the society. Of the last turn-out I know but very little, having been in business for myself for some time; I believe Read, Snyder and Barnes, were the men who called upon me, to know if I would give the wages required by the society.

Q. Did any of these men threaten you?

A. Yes, Harket shook his fist in my face.

---

*Andrew Dunlap sworn.*

I am a journeyman, in the last turn-out, I was in Mr. Conyers employ....I had to conform to the rules of the society; they compelled me to give up Mr. Conyer's work, at the time I was well satisfied with the wages I received. I think it was William Dwyer, George Keimer, and one Craig who came to me, and I was kept from my work two weeks and five days, at the end of which I went to work again. I took no work during the time, but I had a pair of boots half done, which I took back, when they told me to quit work, they gave me two dollars.

Q. Was you under any fears at the time?

A. There were generally two persons at a time called upon me, but I was not much afraid, though there was a good many rough threatenings.

Q. What were they?

A. That if they caught me working at all for the employers 'till they conformed to the wages required, they would beat me. It was from some of the committee, I received these threats, but I do not know their names.

Q. What was the reason you brought back your work unfinished?

A. Because I was afraid if they found it with me they would think I was at work, and punish me.

*Gross examined.*

Q. Did any one ever attempt to hurt you?

A. No.

Q. Was you supplied with work at any time?

A. Yes, with market work; but I could not make a living by it.

*William Hawkins, sworn.*

Q. Say what you know about this affair?

A. I know but very little about it; I know there was such a thing. I was in opposition to the turn-out, and stated that I had got the wages they required from my father; but they still refused to let me work for him, unless he would send in his signature that he would give the wages: they said such was the rule of the society, though I did not hear it read or carried. At length I went with my father's signature, and they told me, they were going to *scab* me that night if I had not came forward.

I would, however, never go to work again if there was another turn-out; though I think it hard to *scab* a man when he gets the wages the society require.

*Mr. Blair, sworn.*

There was a turn-out of the journeymen in October last, and Hepburn, Snyder and Barnes, with three or



four others, called on me, but not being acquainted with them, I did not take much notice of them: they came with the list of the advance of wages from the body, as they called it, and enquired to know whether I would give the prices or not; they had a list in their hands. I looked at the list, and found half a dollar was charged additional on the shortest sized bootees; What, said I, half a dollar for these? Yes, said Barnes, and I'll be damned if we do not have half a dollar more next fall; all the others behaved well.

I knew they would not permit a man to work for us under the price, although he might be ever so willing; I will mention a circumstance that convinced me I was right in this opinion. At the turn out in 1798, I had six men working for me; who were willing to continue notwithstanding the turn-out; (Mr. Dubois was a member at that time.) These men were kept up in a garret, but sometimes after dark, they would venture out to Mrs. Finch's, next door but one, to get a drink of beer; one Sunday evening, when I was gone to meeting with my wife and boy, they had ventured out again. When I returned, I found them hid away in the cellar, they had been beaten, and the girl was crying, and had been beaten also. I was very angry, and determined next day to buy a cow-skin, and whip the first that came near the house. Their clerk, Nelson, was the first, and I fell foul and beat him; he sued me for it, and my men sued them afterwards, we dropped the whole, and squared the yards; the men first acknowledged that they beat my men for being *scabs*. I don't remember their names; Hicks was one; but they were all members of the society. I afterwards had to pay fines for my men, to get them into the body again.

*Cross Examined.*

Q. How long have you been a master workman?

A. Since May, 1795.

Q. Do you contribute to the expence of this prosecution?

A. I am ready to give money to it.

Q. That is not an answer; have you *given* money?

A. Yes, I have, and am ready to give it again.

Q. Was you ever a member of this society?

A. I believe not of this; I was a member of one in 1793, and left it on account of their tyrannical doings.

Q. Do you remember when the patent boots were brought into fashion?

A. When Gordon and Prentis first introduced these boots, they allowed the journeymen 3s. 6d. a pair more than usual; but Gordon and Welch falling out about the price, they *scabbed* Gordon's shop for that season; I thought the proceeding very arbitrary and protested against it, and went to work for that house.

Q. Have the masters a society?

A. They have not; they may sometimes meet together, but they keep no accounts of their proceedings, they may meet as people meet before an election, to consult on the affairs of the moment, but nothing regular.

A juror. Do you remember when you was in the society, whether there was any provision made for married or other distressed members?

A. No; the sole object was to raise and support their wages....there was another society for assisting the distressed and disabled men of the trade. Both employers and journeymen belong to that charitable society.

Q. Do the masters now give the customary price?

A. I give the full price. I don't know what other masters give.

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*John Bedford, sworn.*

It will be necessary for me, in order to show you how some of the journeymen stand, to go back to the turn-out mentioned by Harrison and Logan, when my shop was *scabbed*. I employed at that time from twenty to twenty-four men; both parties stood it out for nine or ten weeks; I do not now recollect the year; but during the latter part of the time, the masters had frequent meetings: at one of them it was proposed, that such of the journeymen as would sit down to work, should be protected against the others, when the turn-out was over....it met the idea of the majority.

## MR. RECORDER.

Q. Was it not more dangerous for the men while the turn-out lasted?

A. No; there was little or no danger during that time. .... The motion being carried, an article was drawn up to that effect, and every one of the masters signed it; it was then handed to the printer; a number of copies were struck off, and distributed among the journeymen. Several of them sat down, but far less than we expected. I got two; some got three; some one, and others none. A number of the masters got tired, and one or two breaking off, the rest were obliged to do the same, or lose all their custom. We had obliged ourselves to support those who sat down, after the turn-out was over, and not to desert them. A committee came to me from the body, and required me to discharge those *scabs*, meaning Harrison and Logan. I answered them...it was impossible; I had given them my promise, under my hand, to protect them; if I discharged them, I should lay myself open to an action of damages, upon my promise. I told them peremptorily, that I would not do it. They went away, and at the next meeting they *scabbed* my shop; after the meeting was over, they came in a tumultuous manner round my house; my wife very much alarmed, said she hoped they would not set the house on fire. From having twenty-four journeymen, I was now reduced to four or five; in that situation they kept me two years and upwards: it is true I now and then got a man, but they were not good workmen; all the rest left me but Harrison and Logan; no man would work for me, who could get work elsewhere. I cannot form an opinion of my loss, but the jury may conjecture what it was, from the nature of the circumstances.

Some time afterward, my little capital being laid out in stock, and no way of vending it at home, an idea struck me of going to the southward, and endeavour there to force a sale. I went to Charleston at the risque of my life, for the vessel in which I went had like to have been lost at sea. I put my articles at an extremely low price, by which I had but little profit, in order to



induce people to deal with me. I got two customers at Charleston; from there I went to Norfolk, Petersburg, Richmond and Alexandria; and in all of those places I obtained customers....admitting I could not make much, yet the price was such as to keep the journeymen employed. I returned with two or three small orders....business became a little brisk, and the journeymen turned out again; on which account, I was forced to raise the price of the work I had stipulated to perform. I did not want to make any profit on the rise, but yet I was obliged to raise my price to the same extent: by this I lost two customers. Afterwards there was another turn-out, and the consequence was, I lost two more; one of them a shoemaker at Alexandria, who had agreed to take 1500 dollars worth *per annum* of me. On the whole I think I lost in consequence of these turn-outs, the sale of 4000 dollars worth per year.

At the time the shop was *scabbed*, they would often come by the window and abuse me: one, two or three nights they broke my shop window, and they took care I should not mistake the quarter from which it came; they did not wish to break my windows, and let me suppose it done by any others than themselves. Once they broke the window with potatoes, which had pieces of broken shoemakers tacks in them, at least the one had which they aimed at my person, and was near hitting me in the face. The boy run out to discover them, but he could not find them out; in this way I continued to be tantalized by the men for a long space of time.

In the present turn-out, Harket, Pullis, and others, in all nine or ten came to my shop, as a committee from the body, to demand higher wages. Harket and one or two others were then in my employ. They asked me if I was willing to give the new rise: I told them I did not know what it was; they read the paper, and I thought the rise was exorbitant; one was three quarters of a dollar, another of half a dollar, and so on. I had thought formerly a rise of three-pence, or six-pence, was a smart rise, but now they think little of a dollar. I told them I supposed I must give it, and asked if any one had agreed to give it....they mentioned Mr. Ryan gave it. I then said, if he gave it I must of course. I took it for granted that Mr. Ryan had agreed, but found

he had only said, if the other masters would give it, he would also give it.

A call of the masters was hereupon made, and we determined at the meeting, that their request should not be complied with. Finally we were advised to institute this proposition; when that was done the men set down to work at the usual wages. They afterward made propositions for a rise on particular articles, which we refused to agree to; and at length they confined themselves to raise fancy-tops but it was refused also. Harrison who had some work at home; at the last turn-out, did not bring it in, from fear; in fact he would not come to the shop, he said they knew he was an old offender, and if he came near me, they would persecute him again.

MR. RECORDER.

Considering this business on a large scale, as it operates on the city and port of Philadelphia, is it not a very essential injury, to raise the prices of such necessary articles on the citizens; and does it not tend to diminish the exports?

A. I consider it as a most serious injury to the city, and particularly to the commerce of Philadelphia. I lost myself the sale of 4000 dollars *per annum* worth of these goods, which was a loss of so much of the city's commerce. I believe if we calculate within a moderate compass, the southern states would, no longer import these articles from England as they now do; but draw all their supplies from us, from New-York and New-England, but such is the perfection, to which Philadelphia has brought her materials, and the excellency of her workmen that she need not fear a rival.

*Cross examined.*

Q. You say the southern states are in part supplied from New-York; are not the same rates given there that were requested here?

A. I don't know.

Q. Do you know the rate at Baltimore?

A. No, but if the rates are, those which were asked

here.... Considering how much dearer house rent, fireing and marketing, is at those places, the journeymer in Philadelphia have the advantage of them even at the present rates.

WEDNESDAY, A. M. MARCH 26, 1806.

*John Conyers, sworn.*

I cannot tell who the committee were who come to notify Rymer, but I believe they were John Dubois, George Pullis and George Snyder, the others names I do not know; I was at Rymer's shop when they came there, it was some time last fall, I think it was in October. They asked him if he would give the wages they demanded, and he told them he had not made up his mind yet.

*Wm. McCulley, sworn.*

*Mr. Hopkinson* shewed the witness a written notice, and asked him if he had been served with it?

*A.* I was served with a similar notice to this, and think it is in the same hand writing....*Keimer* served it. There was one served also on *Mr. Baldwin*, the words are the same, they are "October 29 1805. The society of journeymen cordwainers particularly request to know whether you will give the wages agreeable to a bill endorsed....*George Keimer* secretary"....*George Keimer*, *George Snyder* and *Pollen* called at my shop, there is no difference between this and the notice served on me. I have two at home, the endorsement on the notifications is.

Fancy top boots	-	-	5 dollars
Back strap	-	-	4 ditto
Long boots	-	-	3 ditto
Cossacks	-	-	3 ditto
Bootees	-	-	3 ditto



They had called once before at my shop, as I was informed by my man.

Mr. Rodney putting a paper purporting to be the agreement of the masters, asked the witness, if that was his signature.

A. The signature is mine, but I did not annex the word President to it.

Mr. Rodney exhibiting the paper said that the word "President" to which Mr. M'Culley had annexed his name, was in the same hand writing as the resolution: which he presumed was written by the secretary.

Witness. I admit it is my signature all but the word "President."

—+—  
*Wm. Montgomery, sworn.*

Dubois, Pullis, Pollen, and Snyder, I saw at Ryan's shop, and seven of the committee called upon me in the morning; I think Harket was one, but I am not certain; Barnes was certainly one, who the others were I do not know.

Q. Was their deportment threatening?

A. No, they asked me if I would give the rise, if not I think they said they would take means to make me.

Mr. Rodney produced the resolution of the masters and asked him if that was his signature.

A. Yes.

MR. RECORDER.

Q. What is that paper?

Mr. Rodney....It is a paper purporting to be, the adoption of an unanimous resolution, by the masters, refusing to comply with the request of the journeymen for a rise of wages, and signed by them in these words.

*At a meeting of the employers, master cordwainers October, 30th 1805.*

*Resolved* unanimously that we will not give any more wages than we have given for some time past.

*Wm. M'Cully, President*

*Lewis Ryan*

*Presly Blackiston*

*John Bedford*

*William Blair*

*Thomas Rimer*

John Conyers	<i>Fred. Errenger, secretary</i>
John Wharton	Casper Souders
William Stokes	George Falker
John M'Curdy	Robert Murphey
William Montgomery	Daniel Kossack
John Thompson	William Green
Jacob Bechtel	Robert Taylorson
William Harkins	William Niles
Charles Justis	Adam Walter
John Hallman	John Owen
Peter Sturgis	John Yeager
Robert Christy	Robert Millikin
George Kemble	Jacob Malambre
Leonard Shallcross	George Abel
St. Lawrance Adams	James Newton
Stephen Clayton	Thomas Amies
Daniel Pierson	George Rees
Samuel Logan	Nicholas Crap
L. Keating for Joseph Baldwin	James Alexander
Lemuel Franklin	Richard Miles

Q. When they said they would take means to make you, did they say they would *scab* your shop?

A. They did not use those words, but to the same purpose, for they said I would have no good workmen if I did not agree to give the rise. I had at that time order work from St. Thomas's, New Orleans, and Charleston, to the amount of 2000 dollars, but I could not afford to give the rise of wages, without a loss in executing those orders. I was therefore delayed some time in filling those orders by the turn-out.

Q. Was your shop *scabbed*?

A. No, for the men had to give in; but for seven or eight weeks I had not a quarter men enough, to do my work; I had twenty men at the turn-out and had only three during a great part of the time it lasted.

A *Furor*.... Were those who remained with you, shoe or bootmakers?

A. Both, sir.

MR. RECORDER.

Q. What was the price of boots before the notification, given as wages to the journeymen.

A. Fancy tops were \$4 25 proposed to be raised to \$5			
Back straps	- 3 75	to	- - - 4
Long boots	- 2 75	to	- - - 3
Cossacks	- 2 75	to	- - - 3
Bootees	- 2 50	to	- - - 3

Q. Are not the prices given, both at New-York and Baltimore, which were required by the journeymen here?

A. I do not know the prices of journeymen's wages at those places.

—+—  
*Lewis Ryan, sworn.*

Q. How much can a smart journeyman earn in a week?

A. I have had them to earn but six and seven dollars, but some have earned eleven and a quarter, and twelve dollars, a week; a good workman may earn eleven and a quarter per week, for a good workman can make three pair of back-strap-boots a week, which at three dollars seventy five cents per pair, is eleven dollars and a quarter. Some time last October, Barnes called and asked me if I had any boarders in the house. I told him I had none; from this circumstance I concluded they were assembling again; there was no association of master workmen at this time; therefore I called on Mr. Kemble, and consulted what was best to be done. I told him my apprehensions, that they would raise their prices on us, so high that we should not be able to do any work for exportation; but would have to confine ourselves to bespoke work only....this I had determined to do, and to make the price accordingly. A day or two after, Barnes and Snyder called on me, and asked if I would give the new prices? I answered, yes; but as I had determined to relinquish order-work, it should be to the best workmen, and that only for bespoke work; believing that my customers would allow me the difference, I was compelled to pay the journeymen for making their boots: but it is our custom to charge more than the rise of the journeymen's wages, as we are obliged to lie out of our money, in order that we may indem-



niefy ourselves for that advance. Some of the masters who were not agreed to do as I did, wished me to meet them, in order to consider the requisition of the journeymen; we met accordingly, and it was determined to make a stand, as the best method, to restrain their excessive demands upon the citizens; for last fall they had raised the wages on boots 3s. a pair; we promised to give them an answer in a few days; we came to a resolution, declining to give more than the wages then established; it was signed by all the masters present, a committee was appointed to procure the signatures of other employers; perhaps there may be thirty, forty, or fifty, who have signed the resolution.

Q. Was this an occasional meeting, or a regular one by the masters?

A. It was occasional, there has not been a society of masters here for about seven years back.

Q. Did the masters never attempt to reduce the wages?

A. I never have.... There was a fixed price which we gave before the turn-out, and I have given it ever since.

Mr. Hopkinson.... The counsel for the prosecution, are willing to rest the testimony here, unless it should be necessary to repel any new matter brought forward by the counsel for the defendants.

#### MR. FRANKLIN.

If the court pleases, and you gentlemen of the jury, it is my duty to open the case on the part of the defendants and to state the grounds on which we mean to rely for their acquittal. In performing this duty I shall endeavour to trespass no longer on your patience than I conceive to be absolutely necessary for that purpose. In the remarks which I shall have the honour of addressing to you, when the testimony shall be closed on both sides, I propose to enter, more minutely, into the subject; and to comment at large upon the law and the facts which may appear in evidence. I then confidently hope, that with the assistance of my colleague, such grounds of defence will be established, that you will not hesitate to say that the defendants are not guilty of the offences with which they stand charged;

notwithstanding the sanguine expectations of the prosecutors, or the anxiety of their wishes to effect their purpose. I trust, you will then see that they have failed in the accomplishment of their object, and be satisfied that there is not the slightest ground either in law, or in fact, to convict the defendants.

Your attention has been led far away, from the proper objects of enquiry. In a prosecution for a conspiracy, in the latter end of the year 1805: your view has been directed to facts, which occurred in the year 1793 and 1792. Indeed, all the circumstances, which have been so long dwelt upon; and, which were so nicely calculated to touch your feelings, and excite your sensibility, happened long before any of the defendants, except one, had any concern in the association. All of them, which are of any moment, must have taken place before the defendants, at least many of them, had become citizens of this state, and while they were yet residents abroad, and subjects of a foreign government.

These persons could not possibly have any knowledge of the facts, which, according to the ideas of the counsel for the prosecution, they are now to be convicted of a conspiracy; and, if convicted, to be severely punished.

I will venture to assert, that the defendants, were not only not concerned in the transactions, which were detailed by the witnesses for the prosecution; but, that they were entirely unacquainted with many of them, until they were yesterday given, in testimony at this bar.

And, gentlemen, shall men be punished for that of which they were totally ignorant? Shall men be called to answer at your bar for facts of which they had no knowledge? Forbid it, every principle of liberty; forbid it, every principle of justice! Yet, according to the testimony, which the prosecutors have exhibited before you, they seek this at your hands. One of the witnesses produced, on the part of the prosecution, though now a master workman, was at the very time these circumstances occurred, a member of this association; and is, nevertheless, called forward to establish facts against the defendants, in which he had more concern than they.

[The court observed, that the counsel ought to confine himself to his opening, and not remark on the testimony, if he meant to go over that ground hereafter.

*Mr. Franklin* observed, that the proceeding had been so uncommon, that he could scarcely refrain from expressing his feelings, as they arose; he would however submit himself to the directions of the court.]

We might, said he, consistently with the rules of law, have objected to the admission of great part of the testimony, which has been adduced. We are aware that much of it is totally irrelevant to the subject before you; but, we wished not to suppress a single circumstance: we were desirous, that the whole truth should be disclosed; we, therefore, permitted them to go on in their own way; and to give in evidence, every fact, which they might think material. We leave it to you, gentlemen of the jury, to draw the line, and to determine what parts of the testimony do, or do not, bear upon the case.

The defendants, with a number of other persons, who go under the denomination of journeymen shoemakers, are members of an association, called "the federal society of journeymen cordwainers," which has been established in this city for a considerable time past. For fifteen years and more, the members of that society, have been accustomed to the enjoyment of the privilege secured to them and all other citizens, by the constitution of the commonwealth of Pennsylvania, to assemble together in a peaceable manner for their common good. The objects, of their thus uniting, and meeting together, were the advancement of their mutual interests; the relief of the distressed, and indigent members; and, generally, to promote the happiness of the individuals, of which their society was composed.

These purposes were, certainly, innocent and legal: even in the eyes of the master workmen, they must appear to be laudable and meritorious.

But, unfortunately for these poor and ignorant men! they went a step beyond this! They mistook their privilege! they thought they had a right, to determine for themselves the value of their own labour! and among other acts of their association, committed the unpardona-



ble sin of settling and ascertaining the price of their own work!!!

If this offence, against the master workmen were really an offence against the laws of their country, how were these journeymen to know it? they know, that their *would-be-masters*, had united against them; they had set the example of combining, and confederating together. They had their meetings, and passed their resolutions; they had joined all their forces: not for the purpose only of establishing the prices of their own goods; but also, for the purpose of determining the rate, at which the journeymen should work.

They assumed the right of limiting those whom they employed, at all times, and under all circumstances, whatever might be the misfortunes of society, the changes in the value of necessaries, or the actual increase, or decrease of trade; without consulting the interests, or wishes of the workmen, or permitting them to have a voice upon the question.

To this state of slavish subordination, the journeymen refused to submit. They conceived that every man being the sole owner, and master of his own goods and labour, had a right to affix the price of them; leaving to those who were to employ or purchase, the right to accept or reject as they might think proper.

These appeared to them, and doubtless they will to you, to be principles founded on the plainest grounds of equity and justice.

It is well known, that many changes, according to the fashion, have taken place, in the form, and make of articles of dress; particularly of boots and shoes. These variations, occasion some times an increase of labour, and a proportional consumption of the workmen's time. A remuneration, suitable to the circumstances of the case, is undoubtedly the right of the workman.

When the *full-dress-fancy-top-back-strap-boots*, were introduced into New-York, the employers there, at first, objected to making any extra allowance to the journeymen, for the difference of labour, and loss of time; but afterwards, actuated by a better spirit of liberality, *they held a meeting with the workmen*; and, after entering into a full explanation of the case, the employers were

convinced, of the justice of the workmen's demand, and resolved, to comply with it.

The conduct of the masters in Philadelphia, has been very different indeed, from that of the masters in New-York. The society of journeymen here, appointed delegates, to reason the matter with the masters; but, a conference was refused; and, shortly afterwards, was sent to the journeymen, the result of a meeting held by the masters among themselves; which was, a paper signed by thirty of the employers, announcing their unanimous determination, not to pay any higher wages than they had before given.

The journeymen have repeatedly, since, manifested their willingness to enter into an amicable explanation, and have had frequent meetings for that purpose. They have always been ready to shew, and on the present occasion, are prepared to prove, that independently of the right to fix the value of their own work, their demands were highly reasonable, and ought to have been acceded to by the master workmen.

We shall shew that the amount of wages claimed was no more, than has been paid for several years in New-York; that the same, is now allowed in Baltimore, and Albany, and is much lower than is paid in some other places.

These circumstances, had no weight with the employers, they continued *their united* opposition, and the journeymen, in self defence, were *compelled* to resort to the measures which they adopted, and to continue them as long as the pecuniary situation of themselves and families would permit.

We shall be able to shew that their proceedings, were not *inconsistent* with *any law, or known institution* of the land.

These were the measures, however, for which the defendants were arrested, and committed to jail! These are the grounds, and the sole grounds, on which an *oath* was taken by some of the prosecutors, of a *dangerous conspiracy* against *their interests*, and those of the *community at large*.

I shall now call the witnesses, and, afterwards, proceed to shew, that the defendants are entitled to a verdict of acquittal.

*James Geoghan, sworn.*

Q. Do you know any thing of the turn-out about 1799?

A. Yes; the turn-out you allude to, is that on which Harrison, Logan, and Bedford gave testimony; it was not a turn-out on the part of the journeymen, but of the masters who were about to reduce the wages the journeymen then received.

Q. Were the measures pursued at that time, taken in order to induce the employers to give the old prices?

A. Yes. We assembled then at the corner of Race and Fifth streets, and agreed that we would not set down to work, under the wages we had been accustomed to receive. In consequence, of the resolutions, there was a most obstinate turn-out on both sides; this went on a considerable time, and the employers had a number of hand bills printed; purporting, that they would give the wages they offered, to any journeymen of the body, who would set down and work for one year round. Some of the bills found the way into the society of journeymen, but they did not answer the desired effect.

Q. How much did they want to reduce the prices?

A. I cannot tell.

Q. Can you tell on any particular article?

A. I am not able to say particularly, but it was something considerable. After the turn-out had went on, for some time, the journeymen, anxious to put an end to a dispute so disagreeable, made an offer that they would go to work, for less wages than the employers gave at the commencement of the turn-out: it was near splitting the difference.

MR. RECORDER.

At which season of the year did this turn-out happen?

A. It was in the dullest season; it was in the winter, that the employers made this declaration.

A deputation from the society waited upon the employers with an offer of compromise, and they said they would consider it, and appointed a time for a committee of theirs to meet us, to give us an answer

Q. Who received the proposition?



A. I think it was their then president, Mr. Grant, in consequence of the employers wishing to meet us; we agreed to appoint a committee on our part to meet them, of which committee I was a member. We met accordingly, and Messrs. M'Culley, Grant, and Baldwin, were the committee on the part of the employers. They informed us that our proposition had been laid before the association of employers, and that it was rejected. When they informed us of this, I told them they must consider us standing on our own original footing, our propositions laid no longer open to them. They did not wish to agree to that, for they considered our propositions as still open.

Some time after this, the employers began to waver, and various reports came to the society, that some of them were about to fall off.

One morning early, before I was up, Mr. Ryan, accompanied with Mr. Case, came to the place I lodged at; he had a paper importing, that they would give the wages we asked, with one proviso: that we would take no measures against the *scabs*. This paper had no signatures, and I did not think we could proceed on it. They made some difficulty about the chairman not being able to call the society together; but, however, they returned about 10 o'clock, with the paper signed both by the president and secretary. We then told the gentlemen, we would take no measures against the *scabs*, they had taken measures against themselves.

We immediately called a meeting of the association, and laid the paper before them....some embarrassment arose from the nature of the paper, that we did not know well how to get rid of it. We wanted to have the opinion separately of some of the employers; we went to Ryan, he told us he did not mean any *take-in* by the paper, but to act fairly; and added, we ought to be able to transact our own business. It appeared to us clearly, that Ryan and Case wanted to *humbug* the employers. We returned with the answer, and afterwards I called with somebody on M'Culley, he told me he meant to give us the wages we had before, with the proviso, we did not do any thing with the *scabs*. When we returned to the society, it was agreed to work for such men as chose to employ us, and such as we chose to work for.

MR. RECORDER.

Did the society come to any resolution on the proviso?

A. They took no resolution on it.

A deputation was then sent consisting of one man or more for each shop, who had worked for employers, and asked if they had any men at work for them, some said they had, and some said they had not; but I believe they all had. Ryan said, he had had only one or two hands, which he meant to discharge because they were not competent to his work. Case sent the like answer..... Bedford said he had men at work, but as he had given them his faith he would not discharge them.

These declarations we mentioned to the society by the deputation, and it was said that Ryan and Case were *darned* rascals.

MR. RECORDER.

Say what you know of the transaction, without using oaths or curses. What was the reason the society entertained such an unfavourable opinion of Messrs. Ryan and Case?

A. Ryan had two men, and Case not one; and neither would take any of the body, unless we would work on the same seat with every other without discrimination. However, we were at liberty to work for them.

Q. Was Harrison a member?

A. He was a part of the time. I never recollect that the society went into any resolution about the *scabs*, but there were other shops in the same situation as Bedford's, there was Kemble's and Holman's. I believe we should have taken some resolution respecting them, but for the proviso.

MR. RECORDER.

Did any of the members of the society work for Bedford?

A. I know of none but Harrison and Logan.

Mr. Franklin added....and they were considered as *scabs*, the court will remember.

Q. Was there any personal violence threatened to them?

A. What am I to understand by personal violence?

Q. Why, to hurt or beat them.

A. Never to my knowledge; there is no punishment inflicted on a *scab*, it is his own act which excludes him from the society. He has only to pay a fine if he becomes a member again; but unless he becomes a member, the constitution declares that no one of the society shall work with him.

Q. Any person has a right to exclude himself from the society?

A. Yes; he excludes himself if he deviates from their rules. Harrison paid a fine of four dollars on becoming a member again.

MR. RECORDER.

This is a society with a constitution, and the defendants are members of it; now with respect to the prosecuting counsel, it is fair for them to ask questions in order to ascertain its regulations; but if the defendants have the keeping of the constitution, and laws in the society, they should produce them, if they want any justification from them, whether they do, or do not, their cause knows best.

*Mr. Franklin....* We only wanted to know, what happened upon the resolution of compromise, if we had it in writing it would be best.

*Mr. Rodney....* With respect to the constitution, we have not been asked to produce it, had we been, it is not in our possession, as members of the society. It is the society itself, that has the controul over its own books. But, if we are desired by the court, we will take every mean in our power to produce them.

MR. RECORDER.

No, we don't desire it, we merely observed that it would be the best evidence produced.

*Mr. Rodney...* Proceed to relate the circumstances of the last turn-out.

A. I was noticed, to attend a meeting on Monday evening, which I did, and found it was for a turn-out.



After being there awhile, a list was produced for new wages: the list did not meet my approbation, and I opposed it. The list, if I recollect right, did not make provision for a kind of work, called *order-work for exportation*, which had by custom so been distinguished. There was considerable debate, but finally it was determined to support the new list, by a small majority. There was a second meeting on the affair, which was likewise carried by a small majority, but on that night I believe a great part of the association left the room.

They met a third night, and all parties seemed inclined to accommodate each other, they reconsidered the vote and agreed to the list of prices without a dissenting voice, except as to bootees of a certain description, made of waxed calf-skin and closed on the outside; which are as difficult to make as Cossacks. At length we went to work again at the old price.

Q. Do you know the wages then given at New-York and Baltimore?

A. I cannot state them.

Q. Do you know the cause of this turn-out?

A. They had not sufficient wages for their labour, particularly in the higher kind of work. Back-strap and fancy-top boots, I do not make, because I do not think I am paid for my labour on them....Nor I will not at the present price, while I can get other work to do; and my employer gives me other work.

Q. Do you know of any other attempt made by the masters to reduce the price of wages, whether they have not reduced *order-work*?

A. I never do *order-work*; I am always paid the full wages.

Q. How many hours a day must a man work to earn eleven dollars and a quarter per week?

A. I could not earn ten dollars at the present rates, if I was to work all the twenty four hours of the day.

Q. How long must a man work by candle light, after the hours of the day?

A. I cannot ascertain that.

*Cross examined.*

Q. How long have you been a member of this society?

A. I cannot say exactly, but I believe it may be said that I have been a member ever since its existence, upon the footing it now stands.

Q. Have you been long acquainted with the journeymen's wages?

A. Ever since I was a boy, at least ever since I worked in the capacity of a journeyman.

Q. Tell the wages given as far back as you recollect, and what they are now?

A. When I was first free, they were 4s. 3d. a pair for shoes, boots were then reckoned at three pair of shoes, that is 12s. 9d. a pair, but at that time I believe we did not understand extra work in them, such as they do now: when they raised shoes they did not raise boots to three times the price of shoes.

Q. What is the price of making boots at this time?

A. 18s. 9d. for a full trimmed pair.

Here considerable pains were taken to draw a comparison between the wages for making boots, formerly and at present. But the difference in the particulars of the work at those two periods rendered it difficult to understand, at length it was summed up in this, that twelve years ago boots were made for 12s. 9d. a pair, with stitched rands worth 1s. 6d. of the money.... Now they are two dollars and three quarters, without stitched rands. The advance has been made, partly by the masters and partly by the journeymen; and Mr. Bedford himself was once a very excellent hand at raising the wages.

He could not say how much had been effected by the turn-outs of the journeymen.

Q. Can you say whether a journeyman when he comes here is, or is not obliged to join the society?

A. We consider all workmen who work for wages-shops, as proper members for the society.

*Mr. Ingersol* repeated the last question?

A. Yes.

Q. And if a master continues to employ a foreigner who will not join your society, do you not, in the language of the society, *scab* the employer's shop where he works, if the master will not discharge him?

A. So says the constitution, but I never knew an instance of such severity taking place.

Q. You say the turn-out in 1799, was occasioned by the employers attempting to reduce the wages; tell the particular articles to be reduced, and say whether, when all were taken together, the amount of the list was not the same?

A. I said it was to reduce the wages, but I believe there were some articles they proposed to let stand as they were, such as some kind of shoes; but of this I am not certain. I believed they offered no higher wages on any article.

Q. Had there not been a turn-out on the part of the journeymen just before?

A. I believe there was the year before, but I was not then in the city.

Q. Was it not the object of the masters to bring the wages back to the old price?

A. If I understood right, from what I have heard, it was so.

Q. Is the same price given to all hands, good or bad?

A. None are to work under the price; a good workman, may get more.

#### MR. RECORDER.

Are you at liberty to dispense with your by laws or constitution in that article, which declares that a man's shop shall be *scabbed* for employing a person who has broke the rules of the society?

A. O yes; we can do that by a simple majority, for the constitution makes that express provision.

Q. Is there a great difference between the workmen of those days and the present?

A. An immense difference; if a man was a good workman at that time, allowing a good workman not to progress, he would not be able to make the commonest bootees now.

Q. Does your society ever relieve their members in distress?

A. I have known it done, independent of any turn-out from charitable motives, though it is not an article of the constitution.

Q. Can a good workman now make a pair of boots as soon as he could formerly?



A. I cannot.

Q. Are you a good workman?

A. I am a slow one, but I can work as readily now as I could at any time heretofore.

Q. Which do you think the most profitable work?

A. Making cossacks. It is what I am employed upon.

Q. Is that a kind of work done by inferior workmen?

A. I believe all can do it.

Q. How many instances have you known of charitable relief afforded by the society to its members?

A. Two to my own personal knowledge.

---

*John Hayes, sworn*

I am a member of the journeymen's society, and have been so two years next month. I was President at the time the fever broke out: when the fever was over, I had various representations made to me of the losses occasioned by that disaster, and the oppression of their employers.

Read told me he had only two dollars and a quarter a pair for making cossacks, from the time the fever commenced: if they had even been order-boots he ought to have received two dollars and a half; and if bespoke, two dollars and three quarters: this was given him by Mr. Rymer, others complained, and were dissatisfied with the price, paid for making fancy-top boots. I had made a pair of them myself, but found I could not afford to make them at four dollars and a quarter, which was the price. I made some work for Mr Ryan, and he made a similar reduction upon me, because they were to go into the shop, when he used before to give the same price for shop goods, as he did for bespoke work. I heard no more for some time, till I was notified to attend the meeting, for considering the prices of the work; I was then determined to require an increase of wages, and a turn-out was the consequence. That the prices were too small, is certain, for a man cannot make a pair of back-straps, under three days

setting steadily, late and early. I cannot make twelve dollars a week, and I much doubt if any man can on full-dress-fancy-top-back-strap-boots.

Q. Who was president at the meeting you allude to?

A. Mr. Dubois. There was some difference in the meeting, which I endeavoured to settle by getting them to admit a rise upon some articles, and let the others remain; conceiving that, that would be better than a turn-out, as the members in general, had returned to the city, much distressed, and would be ruined, if turned altogether out of employment. I was one who waited on the employers with the list of prices, and endeavoured to persuade them to agree to it on account of the necessities of the workmen. They promised us an answer, which they sent us, and which you have here; it was an absolute refusal, whereupon the turn-out immediately commenced.

WEDNESDAY AFTERNOON.

*John Hayes, in Continuation.*

A paper in the following words was produced and proved by him:

"October 30, 1805. At a meeting of the employers, master cordwainers, resolved, that we will not give any more wages than we have given for some time past..... Signed, Wm. M'Culley, president:" and a number of others.\* Before this, I had been to my employer, who told me he would give me the same wages as before. I therefore went to work; he was not one of the associated employers, and it was permitted to work for him. We had determined that no case of distress should occur, and Harrison had lent ten dollars, and was willing to lend ten more to prevent it. Bennet had the rheumatism and was assisted with four dollars a week; one for himself, one for his wife, and half a dollar for each of his four children. Several of the masters gave the price we asked; Mr. Young gave that price, but we worked for those generally who had not associated at the old price.

\* See page 39 and 40.

One observation on Mr. Hawkins's case, what past on the subject of *scabbing* his father's shop, who gave him the full wages, was only a joke to create laughter.

*Cross examination*

Q. Do you pay the expence of defending the prosecution?

A. No; the money is advanced by the society.

Q. Do you work for Ryan?

A. I did before and during the fever, but he deducted a quarter dollar a pair for the boots I made while the fever lasted.

Q. What did you earn a week of Mr. Ryan?

A. I work very hard, and later hours than other men, at most I can earn but ten dollars a week: I don't remember I ever earned eleven and a quarter; in common I could not earn more than seven or eight; on an average I cannot make more than nine dollars.

Q. Did Muir earn more than you?

A. I believe he did, but he had to work on Sundays to do it.

Q. Did you apply to Mr. Ryan for work, during the fever?

A. Mr. Ryan gave me four pair of boots to do during that time, but he gave me a quarter dollar less than the usual price. I finished them in two weeks after I had them, and sent them into a town.

---

*Philip Dwyer, sworn.*

I became a member of the society of journeymen in September, 1804; there was a turn-out in the society in October or November following: they agreed to give us the prices we did receive, but we do not receive the same now. They, however, agreed to give us it then; they were to give us two dollars seventy-seven cents for cossack boots; but after Christmas, when the work became slack, they docked us of a quarter dollar on the order-work, and put it on the bespoke or customers work. We continued at these rates till the last turn-out



took place. Last summer we had no stated price for fancy-top-boots; as they had not then come in fashion. They gave us for them half a dollar more, on the idea that they were worth so much of a day's work. I have worked on them in 1805, and could only make eight dollars and a half per week, and I worked from five in the morning till twelve or one at night. I cannot make more than two pair a week. Montgomery gave a year ago two dollars and seventy-five cents, for what Blair cut me down to two dollars fifty cents. For back-straps they allowed something more, but there were no signatures given to the prices agreed upon; so that the employers made alterations as they pleased. I know that I lost twenty-seven cents a pair on boots, which either the customer or the employer put in their pockets. The making most inferior kind of boots, by the regulation of 1804, was two dollars fifty cents; shop cossacks were two dollars seventy-seven cents, they are now but two dollars fifty cents, while they sell at six and a half, and seven dollars as usual; so that they sell for the same, and the employer pays less for the work.

Q. What is the proportion between the amount of the wages for making, and the materials of which they are made, to the selling price?

A. I cannot say exactly, but on a calculation the employer has as much for selling a pair of boots, as the journeyman has for making them. I cannot speak positively, were I an employer I should be a better judge.

Q. Did you agree to take less than two dollars seventy-seven cents for cossack boots?

A. It was agreed that we should make order-work at reduced prices, in order to encourage the exportation trade. For that reason they deducted seven cents from the back-straps, at least they reduce me that sum.

Q. Are you a smart workman?

A. Not too fast or too slow, just middling or so, like the common run.

—

*William Young, affirmed.*

Q. Do you belong to the association of master workmen?

A. I did belong to an association of master workmen which took place about fifteen years ago.

Q. Inform the jury, has there been an encrease or decrease of wages during that time?

A. There has been frequently at different periods both an encrease and decrease.

Q. Do you recollect the turn-out in 1799?

A. Yes, I was a master at that time.

Q. Did the masters attempt to lower the wages of the journeymen?

A. I believe they did, and it was to reduce them a good deal....I mean as to boots generally; but the masters did not succeed in that attempt. There was a society of masters at that time.

Q. Do you know whether the masters encreased the rate of wages at that time?

A. I believe they did not.

Q. Have they not, from time to time, encreased the price of the articles they sell?

A. Yes; the price of bootees was five dollars to five and a half....I make none now under seven. Eight or ten years ago, long plain boots with calf-skin tops, about six and a half dollars; these sell now for nine.

Q. Do you have the same profit now as you had then?

A. I believe the profit to the master is about the same thing.

Q. Do you know any thing of the circumstances of the last turn-out?

A. I know there was such a thing; two of the journeymen waited on me together, they informed me that they felt themselves aggrieved, and had determined to ask higher prices: a list of which they shewed me. I told them I had been in the habit of giving those prices three months before.

Q. Did the master workmen call on you?

A. Yes: I told them I could not retract with propriety, as I had been a long time giving the very wages for which the journeymen turned out.

Q. Do you make a tolerable profit on those terms?

A. I am satisfied with it. The gentlemen, when they called upon me, tried to make some influence upon me to discharge my workmen; I told them I could not do it with propriety. But you asked me respecting the

profit? the price of back-strap-boots, when I gave three dollars and three quarters a pair for making them, I had ten dollars for: the rise of leather which took place 18 months ago, particularly in skins, may have had some effect on the price: I believe eleven dollars is now generally asked and got for them; I have had twelve dollars a pair. I believe there is no standard price among the masters, I as often get twelve dollars as eleven, and this rise is about sharing the profit among the journeymen shoemakers, the curriers, and the masters at the increased rate of journeymen's wages. But I believe the masters have the advantage of them both; as for fancy-top-boots, I believe they are seldom bespoke, unless by those who have a great deal more money than wit.

MR. RECORDER.

You say you sell your back-strap-boots for eleven or twelve dollars; I was fortunate, I got mine for less?

*Mr. Hopkinson....* It was not your honour who was fortunate, but your boot-maker was unfortunate in selling them under price.

*Witness.* Be that as it may, my customers generally call again.

MR. RECORDER.

How high are fancy-top boots?

*A.* I have fourteen dollars a pair for them, and have never sold them less. If any gentleman is disposed not to credit me, as I can see by the expression of some countenances, I can refer them to my customers by name....*Mr. William Waln, Mr. John Allen, and others,* have given me that price.

*Mr. Hopkinson....* Then these are the gentlemen who have more money than wit?

*A.* They are gentlemen who have a right to indulge their fancy. *Mr. Keating* told me *Mr. Ryan* charged eleven dollars for his back-strap-boots; but, I will tell you a reason why I get twelve dollars for that kind of work....I pay my men extra wages to have them done in a superior manner. Such, gentlemen don't mind giving a dollar extra for a neat and well finished pair of boots. For the common run, I have eleven dollars.



The society of masters, in 1798 or 1799, entered into a kind of resolve not to employ any of the body men, in order to break them up altogether, root and branch.... That turn-out was occasioned by the attempt of the masters to reduce the prices of the journeymen's wages.

Q. Did you ever get ten dollars for a pair of shoes?

A. I have got 25s. but I never heard of that price.

Q. Did you ever tell any body that you got ten dollars for a pair of shoes?

A. I never did.

—•—

*John Thompson, sworn.*

*Mr. Franklin....* Here is the journal of the proceedings of the master cordwainers, who had formed themselves into a society on the 13th April, 1789, they held a meeting at which they formed their constitution: the last entry in the book is dated 7 month, 12th, 1790.

*Abstract from the book.*

“ At a meeting of the master cordwainers of the city of Philadelphia, held 13th April, 1789, for the purpose of taking into consideration the many inconveniencies which they labour under, for want of proper regulations among them, and to provide remedies for the same, have unanimously agreed to the following CONSTITUTION :

1. That the subscribers form themselves into a society, named the society of the master cordwainers of the city of Philadelphia; to hold four stated general meetings in every year. Absentees to pay a fine of 1s. 6d.

2. Shall consult together for the general good of the trade, and determine upon the most eligible means to prevent irregularities in the same. Proceedings to be entered in a book.

3. Provides for the organization of the society, by the election of a President, Treasurer, and Secretary, and the admission of future members, &c.

4. Provides for calling the meetings.

5. No person shall be elected a member of this society, who offers for sale any boots, shoes, &c. in the pub-

*lic-market* of this city, or advertises the price of his work, in any of the public papers or hand-bills, so long as he continues in these practices.

6. All fines and penalties to be paid, or for neglect, after notice, to be considered as an unworthy member, and accordingly excluded the society.

7. A committee of seven to meet together, as often as they think necessary, to transact the business of the society, and report to the next meeting.

8. All questions to be determined by a majority of the members present.

Meetings held, July 1789....October 12, 1789....January 21, 1790....April 12, 1790....12th day of the seventh month, 1790."

MR. RECORDER.

But this society terminated in 1790, as appears from the last entry.

*Mr. Rodney*....But it was a Phoenix that rose from its ashes! the society was renewed afterward.

Q. Mr. Thompson, are you a master shoemaker?

A. I am an *employer*; I give the wages demanded for some particular kinds of work.

Q. Have the masters expressed any resentment against you, for giving such wages?

A. No, not that I know of.

I can afford to give those wages on particular kinds of boots and have a satisfactory profit to myself.

*John Millis, sworn.*

Q. Are you acquainted with the prices of journeymen's work at New-York.

A. Yes.

Q. Look at that paper, are they the prices?

A. Yes.

*Mr. Rodney* then read the list. On reading it, there appeared no difference between those mentioned in the list, and the prices required by the journeymen at the last turn-out.

Q. Is there any difference in the prices given to good and bad workmen?

A. I got full wages for all my work.

*John Bean, sworn.*

Q. Do you know the prices at Baltimore?

A. Yes.

Q. Are they the same as mentioned in that paper?

A. Yes.

[Reads the paper, and it appeared that the Baltimore list was the same as the New-York list].

Q. If these are the wages paid to journeymen, what do they sell for there?

A. Full-dress-back-straps sell for thirteen dollars, and others in the same proportion.

*Mr. Bedford was examined again as to the price of boots.*

He said, the highest price I ever got for fancy tops was twelve dollars, such as Mr. Young says he got fourteen dollars for. I never got more than eleven dollars for what he says he gets twelve dollars for.

*Mr. Hopkinson....* One question, I ask you, did you endeavour to prevail on Mr. Young, to discharge his workmen?

A. Upon my oath, I did not speak a word to that import, nor did Mr. Ryan.... All we said was this.... There is a rise of wages demanded by the journeymen, we have brought you a paper signed by the masters generally, refusing to give it; if you choose to sign it, we shall be glad you would. He told us that he gave the wages, and that he could afford to give them because he sold his boots for twelve and fourteen dollars a pair.

*Mr. Ryan was also examined again,*

Q. Did you ask Mr. Young to discharge his men?

A. Never. He told us that he had been giving the wages, and had charged twelve and fourteen dollars for boots: all that passed on our side was, that we would wish him to join the masters.



I have not made any fancy-top-boots; my price for back-straps is ten dollars and a half, unless they are some thing out of the way, either for cork soles, or an uncommonly large man; but, in such cases, I never got more than eleven dollars, and that not more than three times.... Yet my work is as good as is to be had at any shop in the city. I pay for my stuff, and can always command the best materials. I pay my journeymen regularly, let his examine the pay they get from him. My credit is good through the city; and I believe my materials and workmen are the best in the city.... At least I buy the best I can get, and pay my people well.

*Mr. Young, called again.*

Q. Did Mr. Ryan and Bedford endeavour to prevail upon you to discharge your men?

A. I have asserted what I believed to be the fact, that they did use influence on my mind to discharge my men; that will appear from my replying to them, that I could not with propriety discharge my hands, and join their society; and I remonstrated with them on the point...as to what Mr. Ryan said of his credit, though it is not material to the question, I beg to be indulged in one word of observation: that his circumstances are become affluent I am glad to hear; but the difference of a few years makes great alterations. When he first came to this country, I took him out of charity, and taught him his business. In making this remark I am only acting on the defensive; I drew no comparisons when I delivered my testimony.\*

*Mr. Rodney....* Conceived it unnecessary to adduce any farther testimony on the part of the defendants.

MR. RECORDER

Directed the counsel for the prosecution to proceed.

\* The counsel for the prosecution, offered Mr. Ryan to rebut this testimony, as slander; but the court over-ruled it as unnecessary.

MR. HOPKINSON.

May it please the court, and you gentlemen of the jury... I can assure you, in the outset of this business, that I will not long detain you with the observations I have to make. The facts, which form the basis of this controversy, seem so well understood on both sides; so little contrariety appears in the testimony respecting them, that I may say, the dispute is more a question of principle than of evidence; and as the principle appears to me to be one of the plainest known to the law, it is impossible for me to anticipate the objections to be set up on the part of the defendants. It will therefore not be expected of me, to do more than lay down that principle, furnish the authorities which support it, and apply them to the present action.

The witnesses, both on the part of the prosecution and defendants, concur in stating the material facts on which the prosecution rests, and which are prohibited by the laws of the country; and which the court are bound to punish upon conviction.

When I use the word punish, I would not be understood that it is intended to do any personal injury to the defendants; nor that they should come under any severe penalty;... All I wish is to establish the principle by the decision of the court, and the correspondent verdict of a jury. We have no wish to injure these men, but we trust you will decide as the law decides; and after establishing the illegality of the measures pursued by the defendants, no men will be more ready than the prosecutors to shield the journeymen from any disagreeable consequences from a conviction.

The cause is an important one... It is said on the one side to involve an important principle of civil liberty, that men in their transactions with others, have a right to judge in their own behalf, and value their labour as they please: on the contrary, we shall shew that the claims and conduct of the defendants are contrary to just government, equal laws, and that due subordination to which every member of the community is bound to submit... all these are essentially connected with the present prosecution.

Almost two days have been consumed in the examination of witnesses, and much of that time has been spent by the defendants, in enquiring into points not relating to the issue. It has been attempted to be shewn, that the master workmen, associated and formed themselves into similar societies, and this they say constitutes a defence for the defendants, if the fact be so....two *wrongs* never make a *right*. If the masters have associated in the manner stated, they are amenable to the law in the same manner as the associated journeymen. But you cannot say, that one crime shall merge the other: yet in justice to them, I must say, that all proof of this sort has failed; there has been no proof shewn, that the masters associated for unlawful, or oppressive purposes; or that when associated, they ever attempted to controul the journeymen. There is nothing like it in the constitution and minutes, that were read from the book produced. They say they associated for the convenience of the trade; nothing is said of raising or decreasing wages; nothing relative to any provision or declaration, as to the price of workmanship, &c. If you take this book into the jury room with you, when you retire, you will not find a single transaction, at any of the several meetings, tending to the injury of any individual of the community. The period of its existence was short; it began in August 1789, and ended in July 1790; at this time the prosecutors were not master shoemakers.

Another association has been mentioned: it is said to have existed in 1799, but no attempt has been made to shew that they ever undertook to interfere with the rights of others, or to prevent masters or journeymen from taking or giving what wages they please; but even that society is at an end....it has long since ceased to exist. You have no proof of its being an organized society, no journal or minutes of its proceedings; but such as it was, it is now out of existence.

The third thing they offered in proof, is a paper signed by the masters, dated the 30th October, 1805. This is an answer to what the journeymen called upon them to know, namely, whether they would, or would not, give the wages mentioned in a list presented to them. They gave the answer, no doubt, as it stands in that paper, and



some of them met for the purpose ; but you do not hear they have met, or done any thing since. An answer was required of them, and this, both in its form and matter, is a decent and respectable answer to the body of men who enquired : but you find the masters did not all meet ; the answer framed by those who met, was handed about for the signature of others ; no one was compelled to sign ; there was no penalty or fine for a refusal. You find Mr. Young, Mr. Thompson, and others, refused to sign....they were free to do so ; it depended upon their own pleasure, and they exercised it. Every man was permitted to proceed in his own way. While we claim the right to exercise our own judgment, we leave others free to exercise the same. We say, we will not give these wages ; but no man is bound to this association for 24 hours, if the next day 12 of them had changed their mind ; there was no restriction that they should not act upon the new impulse ; every man is left to pursue what his own conscience and judgment dictates. Then all this STUFF about master workmen is out of the question : if they have associated contrary to law, that is answered by saying, they are liable to a similar prosecution with the defendants.

Without recurring particularly to the evidence, I venture to state, without any apprehension of contradiction, it has been proved, a certain number of persons, among whom are the present defendants, associated for several distinct and criminal purposes. This is the git of the prosecution, it is not for what any one man of them has done, that the state prosecutes : the offence is in the combination.

Why a combination in such case is criminal, will not be difficult to explain : we live under a government composed of a constitution and laws....and every man is obliged to obey the constitution, and the laws made under it. When I say he is bound to obey these, I mean to state the whole extent of his obedience. Do you feel yourselves bound to obey any other laws, enacted by any other legislature, than that of your own choice ? Shall these, or any other body of men, associate for the purpose of making new laws, laws not made under the constitutional authority, and compel their fellow citizens to obey them, under the penalty of their existence ? This

prosecution contravenes no man's right, it is to prevent an infringement of right; it is in favour of the equal liberty of all men, this is the policy of our laws: but if private associations and clubs, can make constitutions and laws for us...if they can associate and make bye-laws paramount, or inconsistent with the state laws; What, I ask, becomes of the liberty of the people, about which so much is prated; about which the opening counsel made such a flourish!

There is evidence before you that shews, this secret association, this private club, composed of men who have been only a little time in your country, (not that they are the worse for that,) but they ought to submit to the laws of the country, and not attempt to alter them according to their own whim or caprice.

It is in proof, that they combined together; for what? to say what each man shall have for his labour: no.... one man may ask more for his labour than any other does. Dubois may do it, or any of the defendants may do it; they may get four dollars for making a pair of boots, if they can get any person to give it, who has more money than wit...(as Mr. Young says is the case with some of his customers.) It is not intended to take away the right of any man to put his own price upon his own labour; they may ask what they please, individually. But when they associate, combine, and conspire, to prevent others from taking what they deem a sufficient compensation for their labour....and where they undertake to regulate the trade of the city, they undertake to regulate what interferes with your rights and mine.

I now am to speak to the policy of permitting such associations.

This is a large, encreasing, manufacturing city. Those best acquainted with our situation, believe that manufactures will, bye and by, become one of its chief means of support. A vast quantity of manufactured articles are already exported to the West Indies, and the southern states; we rival the supplies from England in many things, and great sums are annually received in returns. It is then proper to support this manufacture. Will you permit men to destroy it, who have no permanent stake in the city; men who can pack up their all in a knapsack, or carry them in their pockets to New-York or Balti-

more? These manufactures are not confined to boots and shoes....though that is very important, as you learn from Mr. Bedford, that he could export 4000 dollars worth, annually. Other articles, to a great amount, are manufactured here, and exported; such as coaches and other pleasurable carriages; windsor chairs, and particular manufactures of iron. I cannot make a calculation of the importance of manufactures to this city.

If the court and jury shall decide, that journeymen may associate together, and determine that none shall work under certain prices; then, when orders arrive for considerable quantities of any article, the association may determine to raise the wages, and reduce the contractors to diminish their profit; to sustain a loss, or to abandon the execution of the orders, as was done in Bedford's case, who told you he could have afforded to execute the orders he obtained at the southward, had wages remained the same as when he left Philadelphia. When they found he had a contract, they took advantage of his necessity. What was done by the journeymen shoemakers, may be done by those of every other trade, or manufacturer in the city....A few more things of this sort, and you will break up the manufactories; the masters will be afraid to make a contract, therefore he must relinquish the export trade, and depend altogether upon the profits of the work of Philadelphia, and confine his supplies altogether to the city. The last turn-out had liked to have produced that effect: Mr. Ryan told you he had intended to confine himself to bespoke work.

It must be plain to you, that the master employers have no particular interest in the thing....if they pay higher wages, you must pay higher for the articles. They, in truth, are protecting the community. Nor is it merely the advance of wages that encreases the price to the consumer, the master must have some compensation for the advance of his cash, and the credit he frequently gives. They have no interest to serve in the prosecution; they have no vindictive passions to gratify....they merely stand as the guardians of the community from imposition and rapacity.

A great rise was attempted, in 1805, on prices mutually agreed upon in 1804, without reason, in a mild winter,



when wood and every necessary of life was unusually cheap....I can see no pretext for the attempt, but the encreasing avarice of these men. They took the advantage of their masters, I mean their employers, in the fall of 1805, when the business was becoming brisk; when they knew the employers must have work done for their customers; they ask from seventy-five to twenty-five cents advance on making boots, according to their quality. Is this spirit of exaction to be encouraged? Will the community be satisfied to be at the mercy of these men? Your verdict must determine, whether it is to be continued or suppressed: nor can they plead the conduct of the masters as an apology. You heard but one witness say they ever reduced the prices of workmanship in the dullest season; and he speaks only of a reduction of twenty-seven cents, viz. from two dollars seventy-seven cents to two dollars fifty.

If this conspiracy was to be confined to the persons themselves, it would not be an offence against the law; but they go further. There are two counts in the indictment; you are to consider each, and to give your verdict on each. The first is for contriving, and intending, unjustly, and oppressively, to encrease and augment the wages usually allowed them. The other for endeavouring to prevent, by threats, menaces, and other unlawful means, other journeymen from working at the usual prices, and that they compelled others to join them.

If these persons claim the right to put the price on their own work, if they say their labour is their own, and they are the judges of its value, why not admit the same right to others? If it is the right of Dubois, and the other defendants, is it not equally the right of Harrison and Cummings? We stand up for the right of the journeymen, as well as of the masters. The last turn-out was carried by a small majority....60 against 50, or thereabout: shall 60 unreasonable men, perhaps single men, having no one to provide for but themselves, distress and bring to destruction, 50 married men with their families? Let the 60 put what price they please on their own work; but the others are free agents also: leave them free, or talk no more of equal rights, of independence, or of liberty.

## TRIAL OF JOURNEYMEN

It may be answered, that when men enter into a society, they are bound to conform to its rules; they may say, the majority ought to govern the minority.... granted :....but they ought to leave a man free to join, or not to join the society. If I go into a country I am bound to submit to its laws, but surely I may judge, whether or not I will go there. The society has no right to force you into its body, and then say you shall obey its rules under severe penalties. By their constitution you find, and from their own lips I must take the words, that though a man wants no more wages than he gets, he must join in a turn-out. The man who seeks an asylum in this country, from the arbitrary laws of other nations, is coerced into this society, though he does not work in the article intended to be raised; he must leave his seat and join the turn-out. This was Harrison's case....he worked exclusively in shoes, they in boots; he was a stranger, he was a married man, with a large family; he represented his distressed condition; they entangle him, but shew no mercy. The dogs of vigilance find, by their scent, the emigrant in his cellar or garret: they drag him forth, they tell him he must join them; he replies, I am well satisfied as I am....No.... they chase him from shop to shop; they allow him no resting place, till he consents to be one of their body; he is expelled society, driven from his lodgings, proscribed from working; he is left no alternative, but to perish in the streets, or seek some other asylum on a more hospitable shore. To the prayers of Harrison and Dobbins, they gave this stern answer: we hear your prayer, but we will not relax....you may perish, but we will not permit you to work.

They may say, they did not permit their members to perish; they furnished these men with money for their support. They furnished Harrison with five dollars in five weeks; a man who can earn eleven dollars per week, must, for being idle, receive as a compensation, one dollar a week badly paid :....charitable and compassionate associates!

On the general principle, then, we regard this prosecution as standing on a solid foundation.

I will now proceed to shew you what the law is, and you will receive from the court more information on the

subject. It will be seen, that the mere combination to raise wages is considered an offence at common law : the reason is founded in common sense. Suppose the bakers were to combine, and agree not to sell a loaf of bread, only for one week, under a dollar, would not this be an injury to the community?...Certainly it would : and few men, unless their pockets were filled with money, could support it for any considerable length of time. All combinations to regulate the price of commodities is against the law. Extend the case to butchers, and all others who deal in articles of prime necessity, and the good policy of the law is then apparent.

1 Hawkins, c. 72, § 2, in note, was cited. Speaking of combinations, he says ; “ but since it does not appear that such an offender is indictable by any statute, it is safest to proceed at common law.”

“ Where divers persons confederate together, in order to prejudice a third person, it is indictable as highly criminal at common law.”

“ Journeymen confederating and refusing to work, unless at encreased prices, is indictable !”

“ A conspiracy to do an unlawful act, though nothing done, or to maintain one another in any matter, whether it be true or false, is indictable”

*Mr. Hopkinson* next cited 8 Mod. p. 11. Wise against the journeymen taylors at Cambridge. “ A conspiracy is unlawful, even though the matter might have been lawful, if done by them individually.

“ Conspiracy is an offence at common law ; therefore, indictments need not conclude *contra formam statuti*.

“ In this case, there was a statute fixing the price of wages.”

To the same point is the case in 8 Mod. p. 320. *Rex vs. Edwards and others*.

4 Black. p. 136, Christian's ed. describes what a conspiracy is.

“ Every confederacy to do acts prejudicial to others, is indictable, as to raise wages,” &c.

My intention, in shewing what the objects of the society were in 1799, was to convince you that the present defendants, and the majority of the society, were aiming at the same point in the turn-out of last fall. Some of the acts, stated by Harrison and Dobbins, may not



have been the personal acts of the defendants; but in cases of combinations and conspiracies, each must answer for the the whole: the act of one is the act of each, and to this point is 2 M'Nally, p. 611. 'The existence of a conspiracy being proved, &c. each of the parties is liable.'

All the defendants have been proved to have taken an active part in this combination, by giving notice to the masters, that unless they accept the terms proposed, they will be subjected to all the penalties of their club; such as were inflicted on the shops in 1799.

Taking the law as it exists, and the facts as they are proved, he had no doubt, but under the charge of the court they would find the defendants guilty.

He trusted the jury would see the present cause in this double point of view; the general policy, as it relates to the good of the community, and the flourishing state of our manufactures: the liberty of individuals, and the enjoyment of common and equal rights, secured by the constitution and laws. This case has exhibited such a tissue of infractions of personal rights, by the club of journeymen shoemakers, that was our state legislature to dare to pass such laws as these men have passed, it would be a just cause of rebellion. I will go further, and say, it would produce rebellion if the legislature should say, that a man should not work under a certain sum...it would lead to beggary, and no man would submit to it. Then, shall a secret body exercise a power over our fellow-citizens, which the legislature itself is not invested with? The fact is, they do exercise a sort of authority the legislature dare not assume.

It now rests with the jury, under the direction of the court to say, whether we shall in future be governed by secret clubs, instead of the constitution and laws of the state; a verdict of not guilty, will sanction combinations of the most dangerous kind; a contrary verdict will give the victory to the known and established laws of the commonwealth.

One word more; we are told the prices asked by these men, are those given at New-York and Baltimore: if so, why do not these men go there? They know if their wages are higher there, their expences also are higher: they do not stay here out of patriotism; they know their own interests, and can calculate them with accuracy; they

can better afford to work here at their old wages, than at the higher rates given in our neighbouring cities.

My observations on this trial, have been loose and desultory ; not to my own satisfaction, and perhaps not to yours. If I had had time to peruse my notes of the evidence, I would have been better prepared.

The facts proved are, that an association exists in this city, of which the defendants are members...that they not only undertake to regulate their own wages, but that of others, a power more odious than is exercised in Turkey, or any other tyrannical government ; a power you would not suffer to be exercised by your own government. You will then, I trust, by your verdict, wrest it from the hands of these men, who have acquired it only by their usurpation.

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MR. FRANKLIN.

I fully agree with the gentleman who last addressed you, that this is a cause of great magnitude, not only, as it may affect the character, the feelings, and the interests of the persons immediately concerned, but as it involves principles of justice, and constitutional privilege, which are important to us all.

If this trial should, unfortunately, be followed by a verdict of conviction, the consequences to the defendants will indeed be serious ; but, I am bold to say, that to the citizens of the commonwealth at large, they will be infinitely *more serious*.

If the grounds on which the prosecution rests, be once established...if the doctrine contended for, be once admitted as part of our legal code...then will some of our most important rights be subverted ;... then will the moulds of our constitution be broken down, and our dearest privileges be completely overwhelmed by a torrent of English criminal law.

The charges preferred against the defendants, are contained in three separate and distinct counts of the indictment.

First...For that being artificers and journeymen in the art of a cordwainer, and not content to work at the usual prices and rates, &c. See page 3.

Second...Is conspiring and agreeing to endeavour to prevent, by threats and other unlawful means, &c. See page 5.

The third and last is...For that they designing, to form a club and combination, and to make and ordain unlawful and arbitrary bye laws, &c. See page 6.

I shall consider each of these charges separately as it respects the *object* of the combination, or conspiracy, charged upon the defendants; and shall endeavour to shew, that if their design or purpose, were innocent or not unlawful, their uniting together and forming themselves into a society for effecting them, cannot be unlawful or criminal.

[Here he read the first count.]

In this count, it is merely stated what were the prices insisted upon by the journeymen, and that they were more than the usual rates and prices used and *accustomed* to be given and *allowed*.

This charge is, indeed, of a very *general* and *indefinite nature*. It is a rule of the common law of Pennsylvania, that every indictment shall contain a *certain* and *precise* allegation. What are the usual rates and prices? Ought they not to have been stated before we were made to answer to a criminal accusation, for not adhering to them?

*Mr. Recorder*....That is a point that comes to the court.

*Mr. F.* I leave it there. Should it not have been alleged *how* long these rates and prices had been accustomed to be given, whether for a century past, or from time immemorial. If it be contended on the part of the prosecution, that the rates and prices of such work, are so fixed and settled by usage and custom, that they cannot be altered: that usage and custom ought to be clearly and explicitly proven.

What is a custom?

In 7 Viner 165. And Davis's Rep. 31, B. It is laid down that a custom in the intendment of law is such a usage as hath obtained the force of a law, and is in truth a binding law to such particular places, persons, and things, which it concerns; and which custom cannot



be established by grant of the king according to 49 E. III. c. 3, or by act of parliament, but it is *jus non scriptum*, and made by the people only of such place where the custom is.

In *civil* cases, where a custom is relied upon, it must be proven by the clearest testimony...much more so in a *criminal* case. In the present instance, none has been proven or attempted to be proved.

In fact, none exists....Neither *custom* nor *law*, has fixed the price of this or any other kind of work.

Has the master then the sole right of determining the wages which are to be given for the labour of his journeymen? This would be too arbitrary a power for any man to contend for; it would be an insult to your understandings, to insist upon it.

The real value of labour, in a country, must depend upon a variety of circumstances, which neither the master or his journeymen can in any way controul. As to the price which any particular employer may pay his workmen, that must be regulated by the contract between them. If they can mutually agree upon a price to be given, the master is bound to give, and the journeymen must abide by the sum stipulated. A different price will be given to different workmen; some deserve more than others, either on account of their greater industry and application, or their greater skill and ingenuity.

But if the employer and journeyman cannot agree upon the work to be done, or the price to be paid, neither is bound to recede from his determination.

If, then, any one man has this right, has not every other man the same privilege? If one journeyman has a right to adopt measures to prevent the effects of the obstinacy or combination of the master shoemakers, may not a number unite for the same object?

A purpose innocent or lawful in *one man*, cannot be otherwise in a *society* or *body of men*. Supposing, therefore, that the facts charged in the first count were true; that the men refused to work but at certain prices, it is no crime, and they cannot be punished for it.

But independently of those grounds, we have fully shewn, that the demand of those men was reasonable and just. The master workmen had raised the price of these very articles; this is in proof, not only on the

testimony of the journeymen, but two of the masters. Mr. Young and Mr. Thompson have acknowledged it; they and some others had generosity enough to raise the wages of their journeymen, and in New-York and Baltimore they uniformly give the wages demanded by the defendants.

[Here Mr. F. commented at large, on the testimony on these points and pointed out the justness of their claims.]

The second count is, indeed, a strange one.... The defendants are not charged with an agreement to menace. They are not charged with a confederacy to prevent....but, with an *agreement* or combination to *endeavour* to prevent by menace!

This count is, no doubt, intended to convey a charge of agreeing to prevent by menace. How is this charge proved? the question before the court does not relate to what happened in 1799, but to what was transacted in 1805:....if the defendants, were not members at that time, to wit in 1799, they are not answerable for the acts of those who were; admitting the law laid down as cited from 2 M'Nally "That all the members of a society are liable for the acts of each even; though one of them be at a distance he is liable." What does the evidence prove? [Here he particularly enlarged on Harrison's testimony.]

From the evidence of Mr. Blair, it appears that he was a member of the association in 1799, though now he appears here, in the character of a prosecutor; for he acknowledges that he contributes to defray the expence of the prosecution. This man ought to be convicted, if any man ought; he ought to be punished, if the doctrine of the prosecuting counsel be correct. If all the members of a society be answerable for the conduct of some of the individuals who compose it, then ought Mr. Blair to answer for those who did so much injury to Mr. Bedford:....And will you convict the defendants (who I have a right to suppose were not members at that time) upon the testimony of one who was a party in the very transactions of which he complains? I trust you will not.

I think I may safely lay out of the case, all the inconvenience which occurred to Mr. Bedford on the principle that it was *damnum absque injuria*. It is not every act which occasions mischief to an individual, that is an



indictable offence. To which point read 1 Bur. p. 516, Rex vs. Eliz. Salmon: which proved that every inconvenience sustained even *by the public*, is not an indictable offence. 3 ditto, p. 1698, Rex vs. Storr. 3 ditto, p. 1731. Rex vs. Bate and fifteen others.\* This was an indictment for a civil injury....held not to lie.

It is to be remembered that whatever circumstances arose from the transactions in 1799, they are not to be imputed to the *journeymen*, but to *the masters*; for Mr. Harrison is proved to be mistaken in saying, that the turn-out in that year, was for an advance of wages; it is in evidence, that it was intended to prevent the masters from lowering the wages of the journeymen, which they had attempted; you must be sensible how difficult it is for the journeymen to resist the masters, who are rich, and abound in the means to support a contest; the journeymen are poor and destitute of means, though on that occasion, it appears the masters were obliged to abandon their scheme of reduction. The journeymen obtained the same wages they had had; you may, therefore, be certain they were reasonable, or they would not be given by men who could continue the resistance.

But, considering the second charge for a moment as proved....that these individuals were guilty of menacing the masters, or those whom they employed.

Is it an indictable offence? I say it is not; menaces are not indictable.

If I threaten to burn a man's house, to assault his person, or even to murder him, it is an offence but not an *indictable* offence. See 2 Haw. B 1. c. 60. § 6 and 7.

Now, if any journeyman who chose to work at the rates or prices offered by the employers, contrary to the wish of other journeymen, were threatened by them, or any of them, with injury to his person or property, he has a complete and ample remedy provided for him by law without resorting to the measures which have been adopted. He might have them bound over to their good behaviour, and if they afterwards were guilty of any threats, their recognizance would be forfeited, and they would be obliged to pay the penalty. But it does not appear that either of the defendants or members of that association, uttered any menaces or

\* See Appendix. A.



were guilty of any assault. Blair said, some of his people were beaten, in 1799, but that is not brought home to either of the defendants.

If any employer suffer inconvenience or mischief, in consequence of his journeymen being seduced or driven from his employment, he has his remedy by a civil action, in which he may recover from the offender, damages equal to the injury sustained. These points are made to show, that these employers are not without their remedy. Cowp. p. 54. Hart. vs. Aldridge....an action of trespass for taking several of the plaintiffs workmen out of his service....shews that this would have been *the proper* remedy in the present case.

The third charge branches forth into three divisions.

First....Combining to make unlawful and arbitrary bye laws. What *proof* is there of the association having made any unlawful or arbitrary bye laws?....None.... But supposing that such laws had been enacted by the society, are the defendants to answer for them in this way? Should it not appear clearly, that they assented to them?

When the question was taken, the defendants might have been in the minority; and shall they be punished for an act of the society of which they have shewn their disapprobation? It appears in evidence, that some of the defendants opposed the adoption of the resolutions which were passed on this very occasion.

[Here he reviewed the testimony on this point.]

The positions advanced by the prosecuting counsel on this subject, might be carried to a very alarming extent. If his sentiments be correct, there are many associations in this city, of high standing, which are acting illegally, and may be made the objects of a criminal prosecution. These associations are governed by rules and bye laws, which, however, correct in themselves, and proper for the regulation of the members of the body, are far from being conformable to the standard by which he seems to think the legality of such rules is to be tried.

I will mention but one instance, and refer to your recollection for numerous other examples which might be adduced.

A large and respectable society in this city has, among many excellent laws for its government, one which Mr. Hopkinson might think very arbitrary and oppressive.

Some gentlemen whom I see on the jury, are well acquainted with the society and the rule to which I allude. It is to this effect: That such members as shall marry in any other mode than that prescribed by the rules of their discipline...though it might be in strict conformity to the laws of the land...and such as shall marry any other than members...shall be expelled from the society...nor can they be restored until they have made a full acknowledgment of the *error of their conduct*.

On the trial of an indictment, against the members of this society, for combining to make arbitrary and oppressive bye laws, large room would be afforded to the gentleman for the display of his eloquence in expatiating on the impropriety of laws, which impose so severe a penalty on a legal and justifiable act...on the impolicy of rules manifestly tending to create a restriction on the frequency of marriages, and a variety of other topics which his ingenuity would furnish.

In fact, according to the doctrine which he has laid down, I know of no society which can legally exist...if it adopt any *other rules or bye laws* than the *constitution or laws of the state*.

Second...Refusing to work for any master or person, that should employ any journeymen who infringed the said law.

Third...Preventing by threats, menaces, or other injuries, any other workman from working for such master.

I shall consider these two subjects together. Is there the slightest evidence, that the defendants ever compelled a single journeyman to leave his employer?

How did they compel? Did they use any violence? If they had they were subject to the laws and might have been individually punished for it.

But neither violence, threats, nor menaces, were used: ...No man was the object of force or compulsion....“The very head and front of their offending was;” their refusing to work for any master who employed such journeymen as infringed the rules of the society to which they belonged.

This I deny to be an offence. There is no crime in my refusing to work with a man who is not of the same association with myself. Supposing the ground of my

refusal to be ever so unreasonable, or ridiculous....to be in reality, mere caprice or whim....Still it is no crime: ....The motive for my refusal may be illiberal, but it furnishes no legal foundation for a prosecution: I cannot be indicted for it. Every man may chuse his company, or refuse to associate with any one whose company may be disagreeable to him, without being obliged to give a reason for it: and without violating the laws of the land.

The propriety of this sentiment appears to me too plain to require any further elucidation.

I have now gone through the several charges contained in the indictment so far as they relate to the *objects*, for which the defendants are said to have combined.

I will conclude this part of my argument, with the remarks of a very sensible and judicious writer, which are so apposite to the subject before you, that I think it right to submit them to your consideration.

1. Smith's wealth of nations, page 89.

“ Workmen desire to get as much, masters to give as little, as possible. The former are disposed to combine in order to raise, the latter in order to lower.

“ It is not, however, difficult to foresee which of the two parties must, upon all ordinary occasions, have the advantage in the dispute, and force the other into a compliance with their terms. The masters being fewer in number, can combine much more easily; and the law, besides, *authorises, or at least does not prohibit their combinations, while it prohibits those of the workmen.* We have no acts of parliament *against combining to lower the price of work; but many against combining to raise it.* In all such disputes the masters can hold out much longer. A landlord, a farmer, a master manufacturer, or merchant, though they did not employ a single workman, could generally live a year or two upon the stocks which they have already acquired. Many workmen could not subsist a week, few could subsist a month, and scarce any a year without employment. In the long run, the workman may be as necessary to his master, as his master it to him; but the necessity is not so immediate.

“ We rarely hear, as has been said, of the combinations of masters; though frequently of those of workmen.



But whoever imagines, upon this account, that masters rarely combine, is as ignorant of the world as the subject. Masters are always and every where in a sort of tacit, but constant and uniform combination, not to raise the wages of labour above their actual rate. To violate this combination is every where a most unpopular action, and a sort of reproach to a master among his neighbours and equals. We seldom, indeed, hear of this combination, because it is the usual, and one may say, the natural state of things, which nobody ever hears of. Masters too, sometimes enter into particular combinations to sink the wages of labour below this rate. These are always conducted with the utmost silence and secrecy, till the moment of execution, and when the workmen yield, as they sometimes do, without resistance, though severely felt by them, they are never heard of by other people," &c.

I shall now examine the law on which the prosecution is said to be founded, and take up and consider the authorities cited.

I shall contend that *in England* the conduct of the defendants would be considered more in the light of a *statutable offence*, than a *crime at common law*; because, as I shall shew, in that country there are acts of parliament which limit wages, and make it criminal to exceed those limits.

But that, even if it were an offence at common law, it has never been extended to this country, either in practice or principle.

The points determined in the authorities cited, are in direct contradiction to the principles of our government, and therefore cannot be law in this state.

I might safely grant, that a conspiracy for *an unlawful purpose* is indictable. But I insist that no combination to accomplish an object which is innocent, or at least not illegal, can be criminal or indictable. And I trust I have shewn that the objects of this association were of an innocent kind, or at least not illegal.

I will now examine, whether those parts of the common law, cited in support of the prosecution...if indeed it be common law...have been extended to this country: ...If they have been extended, it must have been while this state was a province of Great Britain.

What is the rule with respect to the extension of the common law to colonies? It is laid down by Blackstone, 1 Tucker's Black. 108 and 109.\*

[Mr. Samuel Kennedy, one of the jurymen, being sick, the court adjourned till to-morrow.]

THURSDAY, MARCH 27, 1806.

[The court met, but Mr. Kennedy remaining still very sick, they continued the cause till to-morrow morning 10 o'clock.]

FRIDAY, MARCH 28, 1806.

*Mr. Franklin in continuation.*

I feel for the situation of the court and jury, occasioned by the length of this trial; but particularly for the gentleman who is still indisposed: I will, therefore, be as short as possible in what I have to add.

I had reached that part of my subject, which relates to the law of the case, and on which this prosecution is said to be grounded.

1 Hawk. p. 348, "to prejudice a third person....to impoverish him is criminal in a confederacy."

This comes within the meaning of the rule. I was willing to admit, that a conspiracy to do an illegal act was criminal. To prejudice or impoverish a third person, would be immoral and wicked in an individual, therefore, in more. But there are many acts of an individual which may, in their effects, prejudice another, which are not unlawful or indictable. For instance, there is a house not far distant from us, which is situated between a blacksmith's and tallow-chandler's shop; the tenants suffer great inconvenience from the smoke and smell. These shops also prejudice the owner, for he cannot obtain so high a rent for his house, as if they were removed. The workmen employed in them, therefore, occasion a very serious inconvenience to a third person; but who can think them criminal? And yet, according to the doctrine contended for, when carried to its full extent, if each of these shops belonged to a society,

\* See Appendix B.

the individuals who composed it might be indicted for a conspiracy to prejudice and impoverish a third person, and be punished by fine and imprisonment at the discretion of the court.

A man has a right to refuse to work or associate with another; if he refuse, it may operate an injury to the employer, but he is not answerable for that injury.

Mr. Bedford and Mr. Ryan's cases were introduced with a view to the application of this part of the law. It is of no importance what the inconvenience was to them, if the journeymen had the right to refuse. It is possible, if those masters had the right to *compel the journeymen to work at their prices*, they might not have incurred any loss. Mr. Bedford, instead of losing 4000 dollars in 1799, (and I am sorry for his loss) might have made an enormous profit: but would you therefore authorise him to compel men to work for him? I apprehend these things are not to be done for the convenience of Mr. Bedford, Mr. Ryan, Mr. Blair, or any other employer; the rights of the poor are not to be sacrificed to the wishes of the rich, nor should the privileges of the citizen be sacrificed to the benefit of Philadelphia, or the whole trade and commerce of the state.

The next expressions in the authority cited are, "nor to maintain one another in any matter, right or wrong."

If this be correct, what are all your town meetings, your ward committees, and your associations to support particular candidates for office? These are combinations to maintain one another in very important matters: but, if the authority cited, be law here, they are illegal....you must discontinue them, or you render yourselves liable to an indictment for a conspiracy: they are all, all unlawful.

1 Hawk. b. 1, c. 72, § 2, note 2, is cited. This point rests on 8 Mod. p. 11. *Rex vs. the journeymen taylors*. .... "It is not for the denial, &c. but for the *conspiracy* they were indicted; and a conspiracy of any kind is illegal, though the matter about which they conspired might have been lawful for them, or any of them to do, if they had not conspired to do it."

And is it contended that the doctrine contained in this case is law in Pennsylvania? It may be adapted to the



meridian of London, Paris, Madrid, or Constantinople, but can never suit the free state of Pennsylvania.

What is there in it which invites your acceptance? By this authority, whatever is innocent or laudable in one, becomes criminal if he unite with others in doing it.

It is lawful for an individual to use his best endeavors to extinguish the fire which burns his neighbor's house, but he must not unite with others in doing it. What then becomes of your fire companies, your hose companies, and other institutions of a similar nature....none of which are incorporated by law?

It is lawful for a man to improve himself in any art or science, but he must not join with others for the purpose. What then becomes of the numerous literary associations which do so much honour to Philadelphia? What fate awaits the academy of fine arts, of which the learned counsel is so zealous and useful a member?

It is an act of virtue to assist the poor; but to unite with others for the purpose is criminal. What then are all your charitable and benevolent societies, but unlawful combinations, and punishable by this law?

It is lawful for a man to be active in the promotion and encouragement of trade, manufactures and agriculture; but a society formed for the purpose, becomes a wicked and unlawful confederacy. Your Chamber of commerce must therefore be closed, and your manufacturing and agricultural societies be dissolved.

These would be the consequences of adopting the system which the gentleman is so desirous of introducing into this state. But I maintain the position, that it is not common law even in England. There are acts of parliament in that country, to limit the prices of work in various branches of business, and under those acts it is made criminal to combine for the purpose of raising the wages, otherwise than as the acts direct. I believe the journeymen shoemakers would be punishable in England for an attempt to raise their wages, not by the common law, but under the provisions of acts of parliament, made expressly for the purpose.

Admitting, for argument sake, however, that they would be amenable to the common law in England, in-

dependent of the statute, they should shew us that this part of the common law has been extended to Pennsylvania; they must shew us this or they fail. On this head he quoted Tucker's 1 Black. p. 108 and 109. Of the applicability of the law to the circumstances of the country, the colonists even when in a state of dependance on the mother country, undertook to decide, and were allowed the privilege of determining for themselves.

They had the sole right of judging, in what cases they would be governed by the common law of England, and to what cases it should extend.

To judge of this applicability, time and experience were requisite; since it might happen, that a rule which would have been highly beneficial and practicable in the mother country, might from local circumstances, or from other considerations, be deemed inexpedient or impracticable in the colony.

How is it to be ascertained what parts of the common law are, or are not, applicable to the condition and circumstances of the country, and therefore to be *adopted* or *rejected*?

The only modes in which this can be done are by *legislative* acts, judicial decisions, or constant usage or practice.

Such laws as are obviously necessary to the wants of the people generally; whatever has been acted upon or practised, or been recognized by judicial decisions, create an application of so much of the common law, as may be suited to our situation.

I need not, I am sure, go into an argument to shew, that laws of the kind contended for, are neither necessary for us, applicable to our situation, nor suitable to our circumstances.

You might as well introduce that part of the common law relative to cutting off a man's right hand for striking in court, &c. mentioned in 4 Black. p. 124. Also, the doctrine of deodand by which the instrument, or horse, carriage, or other property, which occasions the death of another, even by accident, is forfeited; which has been extended to the forfeiture of a ship. I will not take up time in citing authorities, I refer generally to 1 Black. p. 300.

*Mr. Recorder...* The common law which relates to morals, is what is applicable here. The doctrine of deodand is now restricted to "all that moves toward man"...so they only forfeit the wheel of a coach which happen to run over and kill a person.

*Mr. Franklin...* By an act of assembly, passed since our resolution, (1 Dallas ed. p. 722 and 3) it is declared, that so much of the common law or statutes, as declares, orders, directs, or commands, any matter or thing repugnant to, against, or inconsistent with, the constitution of this commonwealth, shall be null and void, and of no force and effect.

By these expressions, it must be understood that every part of the law which is at variance with the design and spirit of our constitution, the genius and temper of the people, and with the immunities and privileges enjoyed under it, is as completely repealed and made void as if it were against the very words of it.

Our constitution says that "the citizens have a right in a peaceable manner to assemble together for the common good."

If the *manner*, therefore, in which the defendants met for the purpose of their association was *peaceable*, it completely destroys the foundation of the present prosecution.

To shew what parts of the common law were abrogated by the revolution, or retained by the several states when they became sovereign and independent republics, he cited Tucker's Black. pages 405 and 406.\*

What he says of the constitution of Massachusetts is equally applicable to the law of Pennsylvania. The expressions in each are similar, and the spirit and intention precisely the same.

Here he read the comments of the judge on that passage of the constitution of Massachusetts which declares, "that all the laws which had been heretofore adopted, used, and approved, in the province, colony, or state of Massachusetts-bay, and usually practised on in the courts of law, shall still remain and be in full force, until altered, or repealed by the legislature; *such parts only excepted, as are repugnant to the rights and liberties contained in that consitution.*"

\* See Appendix C.



And he particularly requested the attention of the jury to the conclusion of his remarks. "It was therefore essential to the force and obligation of any rule of the common law, that it had been before that time actually adopted, *in the colony*: and further, that it should not be repugnant to the rights and liberties contained in the constitution. Otherwise, although it might be found in every law treatise from Bracton, and Glanville, to Coke, Hale, Hawkins, and Blackstone; or in every reporter from the year books, to the days of lord Mansfield, it would have no more force in Massachusetts, than an edict of the emperor of China."

Let us, then, be informed, by what law the defendants are punishable?

It is acknowledged, that there is no express statute on the subject in this country.

It therefore must be by the common law or it cannot be punished at all.

Where is the evidence of this common law? Is it founded on practice or usage? None can be proved!

Is it founded on any legal decision? None can be produced!

From the first settlement of Pennsylvania, to the present time, no instance can be produced of an indictment for a transaction of this kind. If there were such, it would have been brought forward.

It is true that precedents innumerable may be imported from Great Britain.

But very different are the genius and feelings of the two countries, on the subject of criminal law; particularly that branch of it which relates to the present enquiry.

The theory and practice of the criminal law of England, form an object of horror to every feeling and reflecting mind. On this subject, I beg leave to read a few of the remarks of the late judge Wilson; they are contained in the 14th and 15th pages of the third Vol. of his works.

"To give you a history of the practice of criminal law, would be a task, not difficult, because the materials are very copious; but it would be very disgusting both to you and to me. I draw the character of this practice from one who appears to have a head and a heart,

well qualified to feel and to judge upon the subject....I mean the author of the principles of penal law. The perusal of the first volume of the English State Trials, says he, is a most disgusting drudgery. 'The proceedings of our criminal courts at this era'....meaning that which preceded the revolution....' are so disgraceful, not only to the nation, but to human nature, that, as they cannot be disbelieved, I wish them to be buried in oblivion. From oblivion, it is neither my duty nor inclination to rescue them.' No; nor to rescue from oblivion the proceedings of other ages and of other countries, equally disgraceful and disgusting. I recite only a single instance.

"Mr. Pope, in his picturesque and interesting retrospect of the barbarious reigns of the conqueror and his son, asks, alluding to the laws of the Forests,

"What wonder then if beast or subject slain,

"Were equal crimes in a despotic reign?

"Both, doomed alike, for sportive tyrants bled,

"But while the subject starved the beast was fed.

"Many, I dare say, have considered this as a fine fanciful description of the Poet. It has, however, been exceeded by the strict severity of fact. We are, in the Life of Mr. Turgot, told in plain and sober prose, that so rigorous were the forest laws of France, even so lately, that a peasant, charged with killing a wild boar, alleged, as an alleviation of the charge, that he thought it was a man.

"In these lectures, I have had frequent occasion to observe, and to regret the imperfection and the impropriety, which are seen too plainly in the civil codes and institutions of Europe: it is the remark....it is the just remark of William Blackstone, that, 'in every country of Europe, the criminal law is more rude and imperfect, than the civil.' Instead of being, as it ought to be, an emanation from the law of nature and morality, it has too often been avowedly and systematically the reverse. It has been a combination of the strong against the weak, of the rich against the poor, of pride and interest against justice and humanity. Unfortunate, indeed, it is, that this has been the case; for we may truly say, that on

the excellence of the criminal law, the liberty and the happiness of the people chiefly depend.”

In Great Britain there are statutes made particularly on the subject of confederacies: I will read some of them. 1 Hawk. b. 1, c. 80, §, 10, p. 481. and Shaw's Just. p. 226,\* shew what severe provisions are made against combinations among workmen and others.

The prices of every kind of work and labour are fixed by law; and very high penalties are imposed upon those who transgress them. See Burn's Justice, p. 164 and 165.†

You will readily perceive the spirit of partiality, which breathes through their statutes....and the strong inclinations which they evince to favor the rich at the expence of the poor...the master at the expence of the servant.

If you are desirous of introducing a similar spirit of inequality into our government and laws....if you think that the labourer and the journeyman enjoy too great a portion of liberty, and ought to be restricted in their rights....such disposition and opinions will lead you to convict the defendants.

If, on the other hand, you are satisfied with the wise and liberal principles of our government....if you are contented with the blessings enjoyed under our free constitution, which secures to the citizens an equality of rights, and recognizes no distinction of classes....I shall look for the result of these feelings and these sentiments in a verdict of acquittal.

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MR. RODNEY.

It is not my wish to take up more of your time on this occasion, than the nature and importance of the question will absolutely require. I regret the delay which has taken place, but this is not imputed to the counsel or to the court; it was a consequence of the unfortunate indisposition of one of the gentlemen of the jury. I lament it the more, because I fear that I shall not render the cause so much justice, as at an

\* See Appendix D. † Ditto E.



earlier period my poor talents might have enabled me to have done. I shall, however, endeavour, to give all the satisfaction within the narrow compass of my feeble powers. Ideas, though strongly impressed at the time on the mind, frequently vanish; and to recur to the expedient of lengthy notes, too often fetters the tongue, and enchains the imagination. I am almost ready to assent to the proposition, that there is no case so bad but it can be rendered plausible, by the force of talents and the exertions of ingenuity such as we have seen exhibited on the present occasion. In the picture which the learned counsel, who opened on the part of the prosecution, has drawn of this case, I should not have recognized one feature of the original, if I had not been present when he was so freely using the pencil.

He has attempted to excite your feelings and sympathy, in behalf of those, who can scarce refrain from smiling in your face; he has set forth their merits, their disinterestedness, and their magnanimity, in stepping between you and the impositions of their workmen, to save you from the grasp of their avarice; he has shewn you the losses and misfortunes they sustained in the contest. Is this a true picture of the case before you? Look at the facts, you will there discern the real question now at issue, between the state and the defendants. Stripped of the vest in which he has cloathed this case, and the tinsel of which he has been so profuse, independent of the blaze of passion and of prejudice, which he has kindled, to dazzle your eyes, the object is easily and distinctly seen; the penetration and good sense of this jury must rend the veil, and they will undoubtedly perceive the true and only question in this cause. It is nothing more or less than this, *whether the wealthy master shoemakers of this populous and flourishing city, shall charge you and me what price they please for our boots and shoes, and at the same time have the privilege of fixing the wages of the poor journeymen they happen to employ.* They may colour it as they please. I care not what complection they give it, or in what specious garb they may array it, the simple and naked question is that which I have stated.

You are called to decide for the first time, in this free country, and to fix the precedent, in favour of the doctrine contained in this indictment. The prosecu-

tors, not content with building costly mansions, rapidly amassing fortunes, aspire to lay up their *plums* annually, and they will do it, if you once give them the privilege of fixing the prices of those who are to work for them; to discover all this does not require day light; a candle, wax taper, or a lantern will be sufficient for the purpose.

I have listened with attention to all the arguments that have been urged; I claim your indulgence while I reply to them.

It has been acknowledged, and the gentleman deserves credit for the candor of his admission, that the present is a novel case; that there was never in fact, an instance of a similar prosecution in this commonwealth. If the author of the book of wisdom had lived to this day, he would have qualified his expression, "that there was nothing new under the sun." The gentleman made this acknowledgment in the preface to his argument, and then undertook to state the ground, and principles upon which the prosecution was founded. I have read as a maxim of law, that what has not been done ought not now to be permitted.

When you look at the mass of testimony adduced on this occasion, you will find as long ago as 1789, the masters had a society for the management of their concerns....that the journeymen instituted a society in 1794, for the benefit of the individuals who composed it; in 1798 you hear of a turn-out; in 1799 you hear the same; and notwithstanding all this, you hear of no prosecutions by way of indictment. Were the prosecuting officers of the state, asleep all this time? Have they and the grand juries been slumbering at their posts, and suffered a flagitious, a notorious offence to be repeated with impunity, and to continue its operation without notice or check?....No....Your officers have fulfilled their duty, they have exercised due diligence. The learned gentleman who is to follow me in this argument, I mean Mr. Ingersol, has within that period been attorney general for the commonwealth. Grand juries bound by their oaths and affirmations, have also diligently enquired, and true presentments made of all crimes that have come within their knowledge....If this had been an offence against the law of the land, it could



not have escaped notice till this time; but if there transactions had been secret...was there not another body of men, who combined together to raise their wages; who would not move a rope or start tack or sheet till their terms were complied with. I am instructed to say, that the pilots of this port, did a few years ago, refuse to conduct a vessel to or from the ocean, agreeable to the rates of pilotage, before usually received. This circumstance must have been a matter universally known through the city at the time; the interest of the port, the value of the property afloat, was all placed in jeopardy....The magnitude of the case induces me to believe, and I have been so informed, that the most eminent counsel of the city were consulted as to the mode to be adopted to correct the procedure. Here was not Mr. Bodford's profit on 4000 dollars at risk, but hundreds of thousands, nay millions of dollars in property, and danger to the lives of hundreds and thousands of our very valuable citizens. If that combination had been a criminal offence, it would undoubtedly have been prosecuted. Their conduct was productive of serious inconvenience, I admit; but they had the right to say, at what price they would perform the service; and it was apparent, that if you did not give the wages, you could not compel them to pilot your vessels. I will just remark, at this stage of the business, a striking difference in the two cases....The journeymen shoemakers acted merely in self defence, for the masters had entered into an association in 1789, several years before the journeymen associated. If we had not adduced testimony of the existence of the society of the master shoemakers in 1789, we should have found them on the record of a respected and learned gentleman (the father of the ingenious counsel on the part of the prosecution) Mr. Francis Hopkinson, in his account of the federal procession on the 4th of July, in that year.

Let the jury take out the book of the masters' society, and they will find ample powers vested in them to regulate and fix the prices of the different articles of their trade; and to form a league to reduce the wages of their journeymen.

The 5th article of their constitution, declares, that after thirty members have subscribed, none shall be



admitted who offers any boots or shoes for sale in the public market, or who advertises the price of their articles in the public newspapers. Where is the harm of advertising the price of boots and shoes? It is a masonic secret, they will not submit it to vulgar inspection....Another article of the society of the 13th April 1789, declares that the society shall consult together for the general "good of the trade, &c."....What language can be more comprehensive or expressive than this? Within its capacious grasp there is no object! no subject of their professional interest which may not be fairly included! If it is for the general good of the trade, to raise the price of boots half a dollar a pair, and to reduce, at the same time, the journeymen's wages for making them, the other half dollar a pair, about which you find they have no squeamishness, this clause would authorize them to do it....It is for the good of the trade and not for the good of the public that they associated.

They say, we do not produce our constitution. I told them, they had given us no notice to produce it; it is not my method to dispute about straws, or the stay-tape and buckram of a case. If they had given us notice, we would have used every means in our power to have procured it. We would have got the books even during the trial if we could: had they desired it....The court will recollect that I offered to do so. There were, however, witnesses examined on their part, who are members of the society of journeymen cordwainers, and they could have produced the books as well as we could, for we are only fellow members of the same society.

We are told that this prosecution is brought forward from public motives, and not from personal views; when you see a formidable band of masters attending on the trial of this cause, and some of the most eminent counsel in the city employed to prosecute it; and when you see, further, that it is not taken up by any of their customers, it will require strong arguments to convince you, it is done out of pure patriotic motives: if they could succeed, in persuading the journeymen to believe, that this prosecution is an act of kindness done them, for which they ought to be grateful, I should think with Falstaff, "*they had put some powder in our drink to make us love them.*"

My word for it, this indictment has not originated from motives of friendship for us, nor is it thus zealously supported with a view to our interest or that of their customers. The very endeavour to impose such a belief upon you, must prove vain and fatal to their cause. Their attempt to mask their object, which they would blush to reveal; and to cover their selfish views, with the mantle of pure friendship for us; and sincere attachment to our interests; and of genuine patriotism, cannot succeed! This idle parade of merit on their part, and these hollow, empty pretensions to credit, for the disinterestedness of their conduct, will meet that fate, which they so justly deserve. This masked battery, which they have opened on us, will be turned by the jury on themselves.

To stiffen the heel of their case, as you would a child's shoe, they tell a pitiable tale of Mr. Bedford, who lost a profitable job by the perverseness of the journeymen, who abandoned his shop because he would not pay sixteen or twenty dollars to the society to readmit Harrison and the other man.

I appeal to the testimony, whether a few dollars would not have removed the *scab* from his blighted shop, and yet we are gravely informed, that rather than pay a paltry sum, he declined a lucrative contract to the amount of four thousand dollars! If he did, who is to blame for this? Is it our fault, or his own? The journeymen ask a certain price for their labour, Mr. Bedford does the same for his work... Nobody disputes his right to do so: but he refuses to give the journeymen the wages they demand. This also he has an undoubted right to do. Well, they decline working for him, and he cannot get his boots made in time to catch the bargain. This is the sum and substance of the lamentable story, which we have heard so affectingly told. The situation of Mr. Bedford at that period to be sure was truly deplorable. Indeed he was in a worse dilemma, if possible, than the poor woman, who, according to the children's tale, could not get home at night "because stick would not bang dog, dog would not bite pig, and her pig would not run over the bridge which she was to cross." I perceive you smile gentlemen, and I can scarcely avoid it myself, with my utmost endeavours to be serious. The fable of Mr. Bedford and his losses may be a very



good one for some purposes; but it is so entirely deficient in affecting incident or tragic catastrophe, that it would be out of my power, (tho' my learned friends are equal to the task) to awaken your sympathies or excite your compassion in his favour....for the mild and humane purpose of maintaining this *cruel* prosecution. Let me state to you, what I apprehend to be a similar case...I am wearing shoes, when there comes a severe frost succeeded by a deep fall of snow. I go to Mr. Bedford's shop to purchase a pair of boots to protect me from the weather. He asks me more than he had charged before the winter set in, and more than I am willing to give; he tells me that I cannot get them cheaper at any place in town. I find it to be the fact; and refuse to purchase any pair at all? I am silly enough afterwards, to run about the streets until my feet are frost-bitten, or I loose some of my toes? Would you not laugh at me if I undertook to prosecute Mr. Bedford and his associates, because, when they would not take the price I offered for their boots, I chose to go bare-footed, and was nipped by Jack Frost? Yes, gentlemen, you would treat me with derision; when I should attempt to appeal to raise passions, by shewing you the stump of my foot. And yet I may say, in consequence of refusing to give Mr. Bedford his price for his boots, I have lost flesh and blood, whilst he in consequence of refusing to give a journeyman his price for his labour, has merely lost a bargain, judge whose loss is the hardest. The cases are precisely similar as to principle. Mr. Bedford and myself sustain a loss from our own folly; but it is *damnum absque injuria*.

Suppose I were to ask Mr. Bedford what was his situation when he first landed on our free shores; and how much he has made, since he came into this country? Whether he bro't with him the capital he now possesses? And whether he then belonged to the class of master cordwainers, or to the more humble, but honest circle of journeymen? I believe, if we were to make out a complete account current, or post the profit and loss fairly up in the ledger, we should find a balance in round numbers in his favour, so large, that the net proceeds of the 4,000 dollar job would not sensibly affect the calculation. In fact, we should discover that he has amassed an ample fortune



since he sought an asylum in this new country (where the poorest individual can claim the full price of his labour) from the oppressions of the old world, where statutable provisions fix and regulate the price of every thing almost; here honesty and industry are sure to meet a due reward, and days of labour and fatigue are crowned with years of ease and competence.

It is to the great privileges which we enjoy, to the total exemption from oppressive regulations, that Mr. Bedford is indebted for his success in business.

When I hear men who have inherited large fortunes from their ancestors, or to use a familiar expression, have been born with silver spoons in their mouths, advocating distinctions in society, and espousing measures calculated to affect and oppress the labouring classes of the community, I feel a degree of charity for the errors they commit, because they have been taught from infancy to exercise an overbearing, insulting superiority over those who really are their equals. They fancy that there is some inherent quality in themselves, which entitles them to rank and precedence above the common herd. I cannot feel the same charity for another description of men, of which, thank God, we have very few in this country. For strange as it may appear, it is nevertheless true, that we sometimes meet with an individual, who, having but the other day, as it were, fled from a country where his labour was fixed at so low a price that he could not support himself and his family, only on bread and water; and having acquired in this land of liberty, by toil and industry a handsome fortune, is loud and boisterous for reducing those who move here, in his former humble sphere, to the same state of vassalage and want, which he had to his sorrow experienced in the despotic regions from which he had been compelled by "strong necessity's supreme command," to fly. Abandoning at the same time his native soil, his relatives and his friends. To my mind, such conduct is incapable of any satisfactory solution. I have often seriously reflected on the subject, without being able to explain the enigma.

Let me again call your attention to the volume of testimony, we have unfolded, and which affords so much for present and for future reflection. You cannot be

surprized, after what you have heard delivered on oath, that the master cordwainers should so rapidly grow wealthy and become opulent. It is only matter of astonishment, that under such circumstances, they should have the hardihood to institute the present prosecution. If it be true, as they have contended, that the best, and fastest workers among the journeymen, by toiling at the *last*, late and early, can earn twelve dollars a week, I think it has been satisfactorily proved, that the masters receive a clear nett profit deducting the expence of materials, equal to the amount of wages which they pay their journeymen. From this, it must evidently appear, that those who employ twenty-four journeymen, must make near fifteen thousand dollars a year; when the best journeyman receives about six hundred, a sum scarcely adequate to the frugal maintenance of himself and his family in this city, tho' living on the simplest and cheapest fare which the market affords. Why then, in the name of common sense, are they charged with *avarice* and *extortion*? The labourer is surely worthy of sufficient hire to enable him to live comfortably.

I believe there is not a single profession in this city, in which the profits are so great. Master carpenters, men of skill and science, who have obtained a fair reputation, to many of whom, men are running to get work done, and when obliged, as they frequently are, to let some of their friends have a part of their jobs, make no such sums; they are satisfied, if I am correctly informed, with a fifth of what is paid to the journeymen for building a house.

We are told, in answer to our shewing the precedency which the masters took, in forming their associations, that if they have offended, they also are punishable... true: but they ought to be aware of it, they will be sorry that they burnt their fingers in raking up the embers that smothered a fire which may consume themselves. They will find that the law, like the Gospel, is no respecter of persons; for I trust it will never be said, with truth, in this country, in the language of the poet,

“ Through tatter'd rags great vices do appear,  
 “ Robed and fur'd gowns hide all. Plate sin with gold,  
 “ And the strong lance of justice hurtless breaks:  
 “ Arm it in rags, a pigmy straw doth pierce it.”



In England where they have weighed, gauged, and marked every thing, they have established permanently, the wages which journeymen in various trades shall receive, they punish the master who gives more wages than is fixed by law, as well as the journeyman who asks or receives them. I do not know what strange infatuation could have led to this prosecution. I think the masters ought to have been more cautious of rousing a sleeping lion, or a slumbering tyger, lest they also should fall victims to their rapacious jaws. Lord Kenyon might have put them on their guard, for he has declared in a recent instance, that the masters should recollect they were equally liable to punishment, for giving more wages with those who demanded them, and would be punished accordingly.

Some words were dropped, respecting publications in newspapers, relative to the cause now before you; it is my wish, that every thing of this kind should be avoided. I think it useless, and improper, I pronounce it here, and I would proclaim it on the house top; every cause ought to be conducted without prejudice or prepossession, though I do not think, that so much influence is attached to publications of that sort. The ebb and flow of human characters and personal credit, and of modest merit, is not regulated by the light of the moon. We should be indeed in a wretched situation, if the current of justice could be changed, or its surface ruffled by every little puff from a newspaper. My wish is, that the jury should lay every thing of that kind out of their recollection, and decide upon the facts and the law, as they shall be disclosed in the course of the trial.

It is not necessary, that I should call your attention to that general principle of the criminal law; that all men are presumed innocent until they are indubitably proved to be guilty. The grand jury has found a bill; but that is for the mere purpose of putting the defendants on their trial; it is then *functus officio*, and, remember! they hear but one side of the question. Before the present jury, the counsel must not only prove the facts, as laid in the indictment, but must shew that they are criminal by the breach of some *known constitutional law*. Until they have done this, they cannot call upon you for a verdict of guilty.



The more severe or penal any offence may be, the more cautious ought the jury to be of convicting. If it will subject the defendants to a loss of character, and deprive them of their reputation, to such an extent, as to disqualify them from becoming witnesses on ordinary occasions; if the conspiracy with which they are charged, is a species of the *crimen falsi*, that would subject them to the *injury* and *infamy* I have mentioned: but you will be relieved from any painful measure of the kind; for we shall make their innocence so clear to the jury (without whose unanimous consent they cannot be convicted,) that you will say without hesitation, they are *not guilty; in the manner and form in which they stand indicted.* The law has given us a two-fold armour....a coat of mail in the form of a grand jury; but in the petit jury we have the *Egis* of Jove, to shield us from injury; this jury is judge, both of law and fact. For the purpose of ascertaining what is the law, let us examine what are the facts. In 1789, a society of master shoemakers was formed. In 1794, a society of journeymen was instituted, and continued till the time this prosecution was commenced, in 1805, and down to the present day. It is said, the masters' society was abolished; but if so, another rose from its ashes; and it appears so late as last fall; they had a meeting for the purpose of saying what they would or would not give. But it is objected, that this was but a temporary meeting; be it so: it is not necessary they should have a regular society, to bring them within the meaning of this law of conspiracy. They say, they have no constitution, no bye laws; even if there were no paper, ink, or parchment to produce, facts would speak louder than words or writings. Yet we have found them, signing and sealing an instrument, as their combined and joint act; and this alone is sufficient to charge them with a conspiracy. Now, to shew you what a conspiracy, according to the ancient law, was; I shall cite 4 Black. p. 136 and 137. "A conspiracy to indict an innocent man falsely and maliciously who is, accordingly indicted and acquitted, is a farther abuse and perversion of public justice." Here the prosecutors appear to be the conspirators; and if you acquit the defendants they will be proved such; "for which the party injured, may either have a civil action, &c. or they may be indicted

at the suit of the king, and were, by the ancient common law, to receive the villanous judgment." And well it might be called villanous! we are happy to find it has not been inflicted for a long time past.

But to proceed with the facts: in 1799, the masters attempted to lower the rate of wages, and a turn-out was the consequence; they attempted to take the scale and compasses into their hands, and graduate the prices the journeymen were to receive, for the fabrication of the several articles of their manufactory. This was the period at which Mr. Bedford met with the great loss on the 4000 dollar job. But the great offence is, that they will not work at a shop where those work who violate their rules: they say, they will not frequent a house where certain characters are entertained. But have they not a right to say for themselves, they will not work, or board, or keep company, with this or that particular person? and because this conduct happens to interfere with the interest of some third person, does it render them criminal? If any body is materially affected, by conduct of this nature, it must be those who keep boarding houses; and we have heard no complaint from that quarter. I fancy, some of them find it to their interest, to accommodate the *body men*, whilst others receive equal profit from entertaining those who do not belong to the association. Every man has a right to chuse where he will live, and any number may form a determination not to board in the same house with particular individuals, without incurring the slightest degree of criminality. You might with equal propriety assert, that he was guilty of an offence, who would not sleep in the same bed with another man. By the same rule, like the tyrant Procrustes, you might lop or stretch men to the exact size of your mattress or bedsteads. When those who are members of the journeymen's society, agree not to work in the same shop, or board in the same house, with those who will not join an association, originating from self-defence, the first law of nature: is this rationally to be considered as *duress* or compulsion? If it be either, it does not, as it relates to *duress*, fall within the legal definition of duress, or imprisonment, or duress *per minos*, and I know of no other species. In reference to compulsion, it is like that



in Shakspear, where one of the *dramatis personæ* asked another for his reasons which it was pretended was compulsion, and the reply was; "give you a reason on compulsion!" The fact really is, it is a mere negative agreement on the part of the journeymen as perfectly lawful, as for two or more persons to agree, not to purchase dry goods, or groceries at a particular store.

No person is compelled to join the society, and it would be as novel a definition of the term, compulsion, as it would be preposterous in an individual, to contend that he was compelled to join a society, because, otherwise the members would not associate with him. If this be styled compulsion, what is that to be called which the poor journeymen have experienced, arrested and bound over by recognizance, at the instance of the master cordwainers? No doubt, many of them would have been sent to jail, had not some humane friend interposed, and become their security. When confined, they would have been deprived of the opportunity of working for themselves, at any price. Of every species of oppression, tyranny or compulsion, that is the worst which the forms and instruments of the law are made to subserve, because you are then attacked in a point where you are most vulnerable, and have the least means of defence. You are compelled to submit until the proper season of just retribution arrives; and I am much mistaken, if the books do not all speak one language on this subject. It is said, ours is not a charitable society, notwithstanding they prove, by their own witnesses, that we have done charitable acts towards them and their families: this establishes the fact more effectually, than if it had been written in the constitution, in large characters. By their deeds you are to know companies as well as men.

They are said to be a self-created society. There was once a considerable noise made in this country about self-created societies; it had its day, and is now hushed for ever in the silent tomb. This society had as much right to create itself, as the associations to promote commerce, agriculture, the arts, or any other object.

They assert, as soon as an emigrant journeyman arrives in this city, he is asked to join the society? What then? He has the right to accept or decline the offer;



the thing is perfectly optional. If he declines, we only say, we will not work or board with you. This is no force: if he comes, it is his voluntary act. When you become a member of any institution, you engage to obey its rules. This complaint ought to be made of sterner stuff, it is too flimsy to shelter the prosecution. Those who are declared against by the present body, may form a new one, and enter into similar regulations; the masters may join them, and when a journeyman asks for work, they may enquire to which society he belongs? If to the old, they may answer, we will not employ you; if to the new, we will give you work; you shall be supported. There would be nothing criminal in this conduct, they neither offend the law or the commandments. So the body-men have a right to say, we will work only where we please, and at what price we please; and we know that no earthly power can in this free country compel us. But give a verdict against the defendants, and farewell to the dearest privilege which they enjoy! The masters may then dictate where they shall work, with whom, and at what prices.

Much has been said of the importance of manufactures to this city, and the injury manufacturing interest would sustain, if journeymen were permitted to regulate the price of their own labour. The gentleman has shewn you one side of the picture; I wish to call your attention to the other. The great advantage possessed by Philadelphia over New-York and Baltimore, in the extent of her monied capital. Those cities give more wages, and we have proved them to be given at this very time: and we wish to receive merely the same prices, and no more.

The gentlemen calls out, why do they not go there? Suppose they should at his bidding take wing and fly away, how would Mr. Bedford and Mr. Ryan make their boots, and what is to become of their export trade? Do you wish to banish them? The verdict called for by the prosecutors, will effectually answer the purpose. They may not be able to go off in a balloon, or a stage-coach, but they can walk with their *little all* on their back, and those who cannot may hobble on a crutch, to avoid the infliction of pain and penalties, and of fines, and imprisonment!... New-York and Baltimore wisely hold-out

good prices to attract them; and good policy ought to dictate to the employers here, to allow them as liberal a compensation. Leather is said to be cheaper here, and I do not believe, living costs more than at either New-York or Baltimore. If they can live as well, and can get more wages in those places, they will go; you may tie them for awhile by binding them over to answer indictments, but the instant the prosecutions end, they will leave you, unless you will give them equal encouragement. New-York and Baltimore will gladly receive them, as they take care to profit by every other advantage which our inattention or narrow policy throws into their way. You are not ignorant of the rapid strides they have made to engross your commerce; drive away your artists, and mechanics, and your manufactures will in like manner dwindle.

Philadelphia is a great commercial and manufacturing city; that the legislature of the state by its fostering care, in opening new roads and cutting canals, may render it still more prosperous... must be the sincere wish of us all. Believe me, this city may be considered, as yet in its infancy. It has not arrived to that vigorous state of manhood, which with due care and attention it will attain. Do not then, I beg of you, bring on a premature old age, by establishing the principle, that labourers or journeymen, in every trade, are to submit to the prices which their employers, in the plenitude of their power, choose to give them. I say in every trade, for what is declared to be the law with respect to journeymen cordwainers, must be equally the law with journeymen printers, carpenters, hatters, and every other mechanical calling or profession. I stand up this day, the advocate for them all; though the retained counsel of the present defendants alone. The moment you destroy the free agency of this meritorious part of the community (for remember the principle is undeniable, that labour constitutes the real wealth of a country) the verdict which you will pronounce, will proclaim the decline and the fall of Philadelphia. The learned counsel has endeavoured to persuade you, that by adopting his principles we shall rival the manufactures of London in boots and shoes. I trust the time will come, when we shall rival her in these and every other branch of manufactures. The best



method to accomplish this desirable object, is to secure to workmen the inestimable privilege of fixing the price of their own labour. Let them ask as freely as they breathe the air, wages for their services. No person is compelled to give them more than their work is worth, the market will sufficiently and correctly regulate these matters. If you adhere to our doctrines, you will do incalculable benefit to this city, I venture to predict, without the spirit of prophecy, that scarcely a breeze will blow, but what will waft to our shores, experienced workmen from those realms, where labour is regulated by statutable provisions; not a wave of the Atlantic, which will not bear on its bosom to this country, European artificers, by whom the raw materials furnished from our extensive regions, will be wrought in the greatest perfection. Give me leave however, frankly to declare, that I would not barter away our dear bought rights and American liberty, for all the warehouses of London and Liverpool, and the manufactures of Birmingham and Manchester: no; not if were to be added to them, the gold of Mexico, the silver of Peru, and the diamonds of Brazil.

Having thus reviewed the facts, and considered the subject, on the reason and policy of the measure, in answer to the observations of my learned friend opposed to me, let us next advert to the law which he has adduced to support this prosecution.

If I understood the gentleman, he stated, and he was obliged to do so, that he did not dispute the right of any individual to fix the price of his own labour. This is sound orthodox doctrine, but he undertakes to say, that notwithstanding it is lawful for *one*, that whenever two or three attempt it, it is not lawful for *them*. If this be a sound principle it will hold good in all cases.

I cannot have mistaken the learned counsel, in the position he laid down. He admitted in the most unqualified manner, that any of the journeymen might lawfully ask, whatever wages he thought proper for himself, but he asserted that where two or more agree to ask the same prices, they are guilty of a violation of the *law*, by *uniting in a lawful act!* It is the *combination*, he says, renders that criminal which would otherwise be perfectly innocent. This doctrine sounds very strangely to my ears. Let us consider it first, on principle, and after-



wards on the authorities which he has used in support of it.

I apprehend, there can be no suitable distinction drawn between one lawful act and another. Some, to be sure, may be more laudable than the rest, but all not prohibited or forbidden by law are equally lawful. To make myself perfectly understood, I presume it is admitted that a single journeyman shoemaker, may as lawfully ask any price for his work, as he may do the most meritorious act; this being understood let us proceed to investigate the principle which renders the joint act of two, criminal, though the same act would be lawful for either of them seperately to perform.

One method of reasoning, is by analogy. In natural philosophy, this mode is frequently relied upon. We will, therefore, adopt it. A single merchant may lawfully embark in trade to any amount: the avocations of commerce are so various and extensive, that it is very common, for several persons to enter into partnership, with the view of promoting their respective interests. There are, at this very moment, in this city, firms composed of three, four, or half a dozen individuals, who jointly set their prices on every article they sell. Agreeably to the gentleman's doctrine, they are guilty of a conspiracy. It would be perfectly lawful, no doubt, for any member of the concern, to engage in the same business; but it is a crime in such a number, tho' innocent in one!

Mr. Hopkinson and myself, were once members of a law society, intended to prepare us, like the manœuvres of a parade day, to discipline the military, for the real action of the war. It was a very lawful object in any individual to fit himself for the active sciences of his profession, but for such a number to associate, was absolutely incompatible with his present principles. We could expel any member who violated our rules, this would have excluded him from the society. Was this criminal in us? If not, why is it charged as a crime against the defendants?

The Cliosophic and whig societies of Princeton college (the school in which many of the first characters of our country have received their education) are founded on the same laudable principles. Would the members of either of those bodies be considered amenable in a

court of criminal justice, for uniting in an act of expulsion or refusing to associate with the member when expelled?

There are many persons delighted with the entertainment, which the theatre affords. Any gentleman may lawfully frequent that place of amusement, but for a number to join and take a box, would be highly criminal.

Dancing is a very fashionable and a very pleasing recreation; though according to the principle of my learned friends, a country dance would be criminal, a cotillion unlawful, even a minuet a conspiracy; and nothing but a horn pipe or a *solo* would be stepped with impunity!

To be more serious: the alarm of fire is given. No man will say it is not lawful to extinguish it. I step out of my door: I am called on to assist in moving an engine: I answer, if one can drag the heavy machine along, it is very well, for if I assist it will be a conspiracy; and this beautiful city must be destroyed by the conflagration, or those who put out the blaze must be consumed in the flames of the common law! Let the fire companies and the hose companies of this town, take warning by the issue of the present prosecution. I do not know that any of them are incorporated. Many of them surely are not. By the same rule they might prevent people, from going to church or meeting, a practice so truly commendable. An individual who was not able to take a whole pew would be deterred lest he would be guilty of a conspiracy, from joining with a friend, whose resources would be adequate to the object. May I suppose, when this new code, now promulgated for the first time in America, goes into actual effective operation, we shall be afraid to join in the last solemn act of humanity, burying the corpse of a deceased friend. This afflicting duty must be confided to the hands of the lonely undertaker, as not even the nearest connections can unite in following their departed kinsman to the tomb!

Gentlemen, I have not been considering this subject through the cold inanimate medium of books, but have been comparing the present with such striking analogous cases, that I really feel fearful, if this prosecution succeeds, the learned counsel opposed to me, will, with my colleague and myself, be indicted at the next term

for a conspiracy. For, tho' either of them might lawfully prosecute, or either of us lawfully defend, we come clearly within their doctrine of conspiracy, when two are concerned on each side of the present question.

If this be denied, I will put a stronger case. Let us suppose, for the sake of argument, that we were all concerned for the same client in an important suit, and we unanimously agreed not to argue his cause, unless he payed us one or two hundred dollars each, (not an uncommon case). This is a combination precisely similar to that of the journeyman cordwainers. We jointly determine on the price of our services: our client is the employer, and we are the men to do his business. He refuses to accede to our terms, and thereby looses his cause. Are we liable to be indicted and punished for a conspiracy?

I might proceed in this way, and put numerous other apposite cases to expose the fallacy of the principles, for which the learned counsel has so strenuously contended; but the task would be useless, and the time mispent, after the observations of my colleague, who has anticipated me in much that I had to offer on this point.

We have heard it asserted, that in this country we have no rules of self government, but the laws prescribed by the legislature, and the constitution ordained by the people. I have ever understood, that when any person thinks proper to become a member of a particular society, he is bound by its regulations. It is well settled, that an action may be maintained for any sum incurred under the bye-laws of a corporation. Marsh companies and others frequently exercise extensive authority, and proceed in a summary way to enforce obedience to their rules; a man is not compelled to enter a society, but if he once voluntarily becomes a member, it cannot be disputed, but that he is bound by its rules, whether it be incorporated or not.

This prosecution, I understand, is to be supported on the principles of the common law. Such it appears to be from the face of the indictment, and the learned counsel have explicitly avowed it.

With respect to the civil part of that celebrated system, there is much to applaud. Though I am an admi-



rer of its prominent features, I am by no means an idolater. It cannot be disputed, but that it presents such an abundant harvest, that even the gleaners reap a pretty plentiful crop. That it is capable of improvement and amelioration, will not be denied. Great wisdom and discretion will, I trust, be exercised in amending such a complicated system. I am a friend to reform, but I sincerely hope, that in so important a work, those to whose hands the task is confided, will proceed with that prudence and caution, which will ensure success. That wild ideas, or fanciful theories, will yield to more mature reflections, and practical reformation; may good sense, virtue, and patriotism stand in the gap between, the self interested opposition of zealous bigots, who cannot brook the idea of improvement, and any rash projects of warm enthusiasts, who may be disposed to alter without due consideration.

Of the criminal code, I have uniformly entertained a very different opinion. It is so sanguinary, that it resembles the law of Draco. From high treason to petit larceny, the punishment is death. I speak not now of the mode of trial (though in capital cases a man is not allowed counsel) or of proof, but of the scale of crimes and punishments. I am not ignorant, that a great number of offences have been created by statutes, to which the same severe penalty has been annexed. But in a variety of instances, punishments inflicted at common law, have been mitigated by statute. It would be irrelevant, were I to fatigue you with the disgusting catalogue.

In Pennsylvania, this sanguinary system has been changed. Our penal code has been revised and ameliorated. An enlightened policy has dictated the salutary plan which we have adopted. In the rude gothic castle of the common law, there is no apartment dedicated to the reformation of an offender. How different from the fair fabric Pennsylvania has raised, in which numerous places are provided to reform the manners and the morals of an unfortunate criminal, and to restore him, a new man, to society. He must be guilty of a crime, at which human nature revolts, when he is deprived of the opportunity of correcting his bad habits. All hopes of teaching him how to live,

are then abandoned; and he is consigned reluctantly to the solitary cell to prepare to die.

For the success with which these wise and wholesome provisions have been carried into effect, we are indebted to the laudable exertions of modest, unassuming merit. To the unremitting endeavours of a meritorious sect, (the society of friends) who, in the tranquil shade of retirement, enjoy heart-felt consolation, from the reflection that they have done well. Among the names which will be forever dear to the friends of humanity, I would wish to record those of Caleb Lowndes and Samuel Coates. I am sensible they desire to avoid the glare of publicity, but my respect and veneration for their characters, will not suffer me to omit mentioning their names on this occasion.

Pardon me, gentlemen, for the digression into which I have been unexpectedly led. I thought it was necessary to call to your recollection, the outlines of the criminal part of the common law, and to contrast it with our code, to make you more cautious how you extend a system of crimes and punishments so uncongenial with our own.

I shall contend, however, that by the common law, independent of statutes, the acts which we have done would not subject us to prosecution and punishment; and I deny, that even if they would, we have adopted in Pennsylvania, this particular part of that sanguinary code. I have read you the old definition of the crime of conspiracy, let me now read you the old punishment. As my Lord Coke says, "The judgment is grievous and terrible, viz. That they shall loose their freedom and franchise of the law, to the intent that they shall not be put, or had upon any jury or assize, or in any other testimony of truth: and if they have any thing to do in the King's courts, they shall come *per solem id est*, (that is) by broad day, and make their attorney, and forthwith return by broad day: and their houses, lands, and goods, shall be seized into the King's hands, and their houses and lands stripped and wasted, their trees rooted up and erased, and their bodies to prison: all things retrograde and against order and nature, in destroying all things that have pleased or nourished them".... "AND IT IS TO BE OBSERVED" (says Lord

Coke) "THAT THIS VILLANOUS JUDGMENT IS GIVEN BY THE COMMON LAW." 3. c. Inst. p. 143.

The facts charged against us, are not embraced by the ancient definition of conspiracy, which I will not repeat; nor are we apprehensive of having the dreadful sentence passed on us, which you have just heard from Coke's Institutes.

It is necessary for me to inform you, that since those remote times, the definition, or description rather, of this crime, has been so enlarged as to include a great variety of offences; but never was it, I believe, extended so far as to render criminal, those who united in a lawful act for their common benefit, by any good authority with which I am acquainted. There seems, gentlemen, to be a fashion in the law, as well as in other things, and the prevailing rage is in favor of prosecutions for conspiracy. They are very happily calculated to produce convictions, as any one may discover by consulting their history. The proceeding is easily moulded into every convenient shape, and the rules of evidence are extremely accommodating to the prosecutors.

If you were to mention the name of conspiracy to an old statesman, he would immediately be referred back by his recollection, to the days of Brutus and Cassius. If you were to speak of such a thing to a modern politician, his imagination would instantly present the picture of a combination to subvert the constitution, and an insurrection or rebellion to overturn the government. No such facts, I assure you, are charged against us, and it is impossible they should be against the "Federal society of journeymen cordwainers." Were you to talk on this subject to a barrister, well versed in the black lettered lore, but unacquainted with modern decisions, he would lay his hand upon Lord Coke, and give you the old definition and the old punishment. Of this crime, also, it is not pretended that we are guilty. No, it is one of the more modern species of conspiracy, which they allege we have committed.

Let me remark, that, notwithstanding the villanous judgment, as I have before observed, has not been imposed for a great length of time; the consequence of being convicted of a conspiracy at the present day, is to



render a man infamous, and prevent his being qualified as a witness. [To prove this, Mr. Rodney read 4 Black. Com. by Christian, p. 137, in not. Leach, Crown cases, p. 382,\* and referred to Case in Cowp. p. 258. This, if not a villanous, is an infamous judgment.]

It is my duty to satisfy you, that there is no law subjecting us to this last punishment, for any part of our conduct.

When our forefathers landed in this country, then a wilderness, they brought over with them, according to the most respectable authorities, only so much of the common law, as was suited to their situation and circumstances: neither the civil or criminal part of that code was adopted *en mass*, at any subsequent period. That portion of the criminal code, which was reduced to practice, the founder of Pennsylvania very early endeavoured to ameliorate. The struggle between the freemen of this commonwealth and the British councils, may be traced on the records. It is needless to add, that superior power, disappointed all their benevolent views.

By an act, passed soon after we had unfurled the banners of independence, the common law and statute law, which had *before* been in force in the province, are declared to be binding and obligatory. I call, then, on the learned counsel to shew, prior to the passage of that act, a similar prosecution. I believe it new, not only in the instance, but novel in principle. If they will be so good as to produce a single case, where an indictment has been maintained against any class of labourers or mechanics, either journeymen taylor, cobblers, or tinkers, for uniting in a resolution fixing the prices of their labour, I will give up the defence. I know well, if such a case stains our records, they can and will produce it. Even admitting then for the present, that our conduct would be punishable by the common law, they must satisfy you, that this part of it is in force in Pennsylvania. This will be a task which no legal thesis can accomplish. The only method of shewing it in force, is to prove that it has been acted on, and I bid defiance to all the researches they can make. If the criminal dockets, from the earliest period, were to pass in review before them,

\* See Appendix. F.

I may safely say, they could not discover one solitary precedent of the kind.

This act of assembly presents us with an ample shield against the present prosecution, *hic murus aheneus esto*. The legislature who passed it, intended to prevent such attacks on the rights of individuals, and such encroachments on the privileges of society, through the instrumentality of the common law.

I will remark, that the note of Mr. Leach, which they have cited to warrant the position, that all combinations are illegal, though the subject matter of them be lawful, refers to the case in 8 Mod. for support, and so do the other passages which have been relied on. Before I proceed to examine the only authority on which this monstrous principle rests, let me first inform you what is the credit and reputation of the book, in which the case is to be found. I believe its character is such, as will not entitle it to any evidence with the court and jury. In 1 Bur. p. 386, a reporter of acknowledged merit, and correctness, when this book was cited, viz. 8 Mod. p. 331, *Arthur vs. commissioners of sewers in Yorkshire*, there is a marginal note made in the following terms: "A miserable bad book, intitled *modern cases in law and equity*." Again, when the same book was referred to in 3 Bur. p. 1326, there is another note in which it is stated, "the court treated that book with the contempt it deserves, and they all agreed the case was wrong stated there."

[The counsel for the prosecution observed, that the title of the book referred to, in Burrows, was not the same as that they had quoted.]

*Mr. Rodney*,...If I can be furnished with the old edition in folio, I will engage the title is the same, but if my learned friends will examine the pages referred to, in the new edition, now in court, they will find the very cases that were cited in argument, in Bur. and disapproved by the court, viz. *Arthur vs. the commissioners of sewers of Yorkshire, &c.*

[The old edition not being in court, and the usual hour of adjournment having arrived, the court adjourned until the afternoon.]

FRIDAY AFTERNOON, *eodem die*.

*Mr. Franklin* referred to 1 Black. p. 300, to show, that by the law of deodand, a vessel and her cargo were forfeited to the king, if any thing by accident falling from aloft, should kill any person on board.

The recorder also intimated to the counsel, that in 1 Hawk, p. 122, § 2 and 3, the same principle was to be found which was stated in 8 Mod.

*Mr. Rodney*....I am relieved from the task of making any observations, or adverting to any circumstances, to identify the book referred to in Burr. Reports, and to prove it to be the same which the counsel for the prosecution have cited. They candidly admit the fact. Let me then appeal to the judgment and the justice of this court, whether this miserable book, (for I will not profane the term, by calling it an authority) will warrant them in deciding, agreeably to the doctrine contended for, and executing the monstrous principle it is said to contain. Is an indictment pregnant with such fatal consequences to the dearest rights and interests of freemen, to be supported on the ground of a volume entitled to no credit or respect, and which has been so justly doomed to merited disgrace and contempt? The decisions of the court, to which I have adverted, must be recognised as authority; and they stamp a character on 8 Mod. which destroys its competency for any purpose.

I might here rest the case with safety, confident that the court and jury would pay no regard to such a book. An indictment, built on this sandy foundation, cannot be supported.

Again. When considering any decision, you should uniformly advert to all the facts and circumstances stated in the case. Every expression of the court is to be taken *secundam subjectam materiam*. - No opinion delivered when giving judgment, is binding as authority, unless it be necessary in the decision of the questions involved in the cause. With these principles to direct us, let me ask your attention to the case itself. The King *vs.* the journeymen taylors of Cambridge, 8 Mod. p. 11.

[Here Mr. Rodney read the whole case, and proceeded to comment on it.]



This, it appears, was an indictment for a conspiracy by the defendants to raise their wages as journeymen taylorers. By the statute of the 7th Geo. I. c. 13, their wages were established and fixed at a certain price. Notwithstanding they were regulated so long ago, they cannot ask, at the present day, without a violation of a positive law, a cent more than they are allowed by that statute, which is a poor pitiful compensation, scarcely sufficient to procure food and raiment enough to keep soul and body together. Such, however, is the slavery of their laws, and slaves must submit to them. It was just as unlawful for one, to attempt to get more wages, as for a large number. The object for which they conspired, was in that country clearly illegal. How, then, does this case sustain the principle of my learned friend, that though the object be lawful, the combination is nevertheless punishable. In Pennsylvania, we have no act of assembly, fixing the wages of journeymen shoemakers, or of any other journeymen; and God forbid we ever should! These tyrannous, oppressive statutes, have never been extended to this state. It was, therefore, perfectly lawful for us, either individually or jointly, to ask that compensation which we thought reasonable for our labor. Remember, gentlemen, my position was, that in order to constitute a conspiracy, the object for which they associate must be unlawful. So far, this case warrants the principle I have laid down.

The learned counsel has eagerly seized some loose expressions of the court, as reported in this contemptible book, in which they are made to say, "a conspiracy of any kind is illegal, although the matter about which they conspired might have been lawful for them, or any of them, to do, if they had not conspired to do it, as appears in the case of *the tub-women vs. the brewers of London*."

If these words were to be understood in reference to the case then before the court, and to be taken according to the subject matter under their consideration, their generality would be qualified and restrained by the particular facts and circumstances, upon which they were called on, to give an opinion. When they proceeded beyond the fair boundary of the case, all they said is to be considered, to use a technical phrase, as *obiter dictum*;

and if said by the best judges, as reported in the most accurate book, is not to be considered as authority.

Even as it is stated in 8 Mod. the court inform us that such a doctrine was held in a particular case to which they refer. They do not pretend to determine such a principle themselves, but refer to a previous decision on the subject. I should have been very glad, to have seen this celebrated case of 'the *tub-women*: I believe it is not to be found. If such a case exists, let it be produced, and I will endeavour to answer it. If the gentlemen are not able to produce it, no answer is necessary; for *et non existente, & non apparente eadem est lex.*

There is another part of the opinion of the court, on which the learned counsel seem to place great confidence. It is said by the court, "The indictment need not conclude *contra formam statuti*, because it is a *conspiracy which is an offence at common law.*" Hence the learned counsel argue, that we have been guilty of a crime, punishable by the common law. The passage referred to admits of an easy and satisfactory explanation. It is unnecessary that I should remind you of the statute, fixing precisely to the exact measurement of feet, inches, and barley corns, the wages of journeymen taylor and labourers. Whenever a statute directs a particular measure, or establishes any regulations, without prohibiting in express terms, the violation of them, and prescribing a punishment, any party contravening such regulations, is by the common law subject to indictment; and the indictment is, technically speaking, styled *an indictment at common law.* I will readily admit, that where persons combine to accomplish an *unlawful object*, that is the true distinction, whether that object be unlawful at common law, or rendered so by statute, according to the modern system of conspiracy, they would be subject to an indictment, as it is said in this case to be, at common law.

To illustrate and support the principle I have submitted, I will turn to Doug. Rep. p. 424, *King vs. Smith* and others. The summary of the case, as contained in the marginal note of the reporter, is.... "it is an offence *at common law* to obstruct the execution of power granted by statute, and an indictment for such an offence, need not and ought not to conclude *contra formam statuti.*"

[Mr. Rodney then read and commented on the case.]

To this plain authority I will add another decision, contained in 4 Term reports, p. 202, *King vs. James Harris*. [Reads the case.] Here you find that a power was given by statute to the king in council, to establish quarantine regulations, and to make such orders as they thought proper, respecting persons going on board ships coming from infected places; without annexing any particular punishment to the disobedience of them. The defendant having contravened some of the regulations established, was indicted, and the indictment contained *one count* at common law. He was convicted. When brought up for judgment, as for a misdemeanor at common law, his counsel objected that he was not subject to punishment in that way. But by Buller justice, "On the first clause of this act of parliament, coupled with the order in council, there is no doubt but that the defendant may be punished on a common law indictment." Grose justice...." The act of parliament having given power to the king in council, to make the order in question, and not having annexed any specific punishment to the disobedience of it, it is undoubtedly a common law offence, and must be punished accordingly."

I say with judge Buller, that coupling the regulation of the wages, made by statute, with the combination to increase them, the offence charged against the journeymen taylor in 8 Mod. is indictable *at common law*. But without the statute it would not be indictable at all. In the sense, then, which I have explained, was the language used, and in no other by the court in 8 Mod. and therefore it does not prove, that by the common law, journeymen and labourers could not ask, either singly or in a body, what price they thought proper for their services. Why have statutes been made to fix their wages, if they had it not in their power before to ask at pleasure? Statutes which will some day prove ruinous to the manufactures of England. One bad law always requires another equally oppressive, to carry into effect its slavish regulations. We all know, that the British statutes are so severe, against any person who may persuade an artificer to come to this country, that an American merchant, when in Manchester, must be afraid to smile, or say "how do you do," to one of their journeymen.



His honour, the recorder, has called my attention to a passage contained in the text of Hawkins. It is in these words. "All confederacies *wrongfully* to préjudice a third person are highly criminal at common law." I presume, when the writer uses the term *wrongfully* he means that the act should be, *legally* speaking wrong, or in other language, it must be *unlawful*, and then it would fall within my distinction. Such are the instances which he mentions. One impression may be explained by those which accompany it. *Noscitur a sociis*. But after all, I question very much, whether the books referred to by Serjeant Hawkins, in the margin, would warrant his assertion to the extent. If they would, the learned counsel ought to have produced them, and it would then be in order and in time for me to answer them.

In Pennsylvania, I repeat, there is no legislative scale established, by which the wages of journeymen of any description are graduated and adjusted. We have no legal barometer in which to weigh their services, and without such an act of assembly, unless those British statutes, of which I have spoken, have been extended to this country, which is not contended, we are not liable to an indictment *as at common law*. We have pursued an object, not contravening any positive provision, nor contrary to the established principles of the common law, and we must be innocent.

The determination of any number, not to lodge in the same boarding house with particular individuals, surely cannot be considered as a confederation *wrongfully* to injure them, let it proceed from whim, caprice, or any other motive. The old proverb says, a man is known by the company he keeps; and you must permit every body to choose their associates. Should you establish the contrary principle by your verdict, I beg you to contemplate the consequences. The masters, I suppose, will then select at pleasure the houses in which we must board. They may order us to lodge in the hospital or the bettering house, if they will receive us. If you give them the right to choose *where* we shall live, they will have equal authority to say *how*. They may fix our diet, and declare, whether we shall dine on turtle soup and roast beef, or on barley broth and the legs of frogs.

They may direct us to live on vegetable or on animal food, on fish or on flesh, or to eat off the same plate or dish, drink out of the same tumbler or mug, and to use the same spoon or ladle. If they can determine the quality, they can regulate the quantity with equal propriety, and I expect we shall have our food weighed out to us like a soldier's rations, by ounces, pennyweights and grains.

I acknowledge, the journeymen are not as opulent as the master cordwainers, but it is neither a sin nor a crime to be poor. They are represented, however, as mere birds of passage, who can at any moment flock and depart in a body. So can the masters if it suits their interest. They can follow them the next day, if they find it to their advantage. It is true, they own houses and possess a large capital. Of the former they can conveniently dispose, and though their capital may now lay deposited in bars of silver or wedges of gold, in the cells of the different banks of this city, secured by iron doors and bolts, nothing can more readily escape, or is of more easy transportation. With wings of paper, more faithful than those of the son of Dedalus, it can fly across a sea, wider than the Icarian, or alight on some eligible spot in the United States, where it will be the most productive. Recollect how much of the capital of this city has already flown to other places, where it is actively and profitably employed, and you will believe me without hesitation.

Temptations are held out, to procure a conviction; to allure you, into a verdict of guilty. You are told that you will get your *cossacks* and *slippers* made cheaper, by convicting the defendants! Are you credulous enough to believe this promise will be performed? If you are, you can be persuaded that a stale six-penny brown loaf is a shoulder of mutton. But I have no such opinion of you, or I should not waste my breath in discussing this case. Excuse me for saying, however bloated in promise, they will be very lank in performance. Rest assured, they will not *fox* a boot, or *heel-tap* a shoe, one farthing cheaper for a conviction. I will go further and say, they will not be able to do it. If you banish from this place, (as it is morally certain you will,) a great number of the best workmen, by a verdict of guilty, can you rea-

sonably expect, that labour will be cheaper? Will it not rise in value, in exact proportion to the scarcity of hands, and the demand for boots and shoes, like every other article in the market? My learned friend has said, he was advocating the interests of the journeymen, I assert, that when rationally understood, I am pleading the cause of the masters. Remember I now tell you, that if you convict the defendants, for asking the same wages which are received in New-York and Baltimore; not a month will elapse, before the present prosecutors will gladly offer them the same terms, and they will entreat those they have driven away, to return and work for them. If you will take my advice, you will leave the regulation of these things to the open market. There every article, like water, acquires its natural level: adopt this rule, and you will be more likely to get your boots much cheaper.

I do not know, if you sanction their doctrines, that supposing the journeymen should set up a shop themselves; and offer to make boots and shoes, for less than the usual price the masters have charged, (a thing not improbable,) they would be permitted to sell, or even to buy; at that rate the masters have just as much right, and no more, to fix the price of those articles, as of the journeymens' labour. For when the indictment speaks of the *wages usually accustomed*, I would, with my worthy colleague, thank the gentleman to inform us, when and how long, this custom has been established, that the usage has grown into a law. It is in evidence that wages have varied in different years; the prices have been constantly fluctuating, like every thing else in the market, and it is impossible to shew any legal usage on the subject.

The prosecutors promise, in case you find us guilty, we shall not be punished. I protest against this cruel mode of procuring a conviction. Do they possess the power to pardon us? If they did, are you willing to trust that they will exercise it, when they are the very authors of this prosecution? Are they the executive directory of the state, or has the governor of the commonwealth granted them a blank pardon with his signature and the great seal annexed? I am sure he has not committed himself in this manner. The truth is, if the defendants are convicted, they must be punished.



according to law. The prosecutors cannot controul the sentence which the court will pronounce, nor can they restore our competency as witnesses in a common case, if the effect of a judgment for a conspiracy, will be to render us infamous.

[The court desired the counsel to answer the passage in Leach's Hawkins.]

*Mr. Rodney*....I had flattered myself that the explanation I gave, when I adverted to that authority, a few minutes ago, would have been deemed satisfactory. If the cases which are there cited, had been produced, I would have cheerfully entered into a particular examination of them. The books referred to are not on the table, and the general propositions of Hawkins do not, I apprehend, affect our cause; the court now allude more particularly, perhaps, to the expression, that a confederacy "to *maintain* one another in any matter whether true or false," is a conspiracy. *Maintenance* itself is a crime at common law; and by statute. A combination, therefore, to *maintain*, must be unlawful; and even if the cases cited, should be found, on accurate investigation, to support the principle, they would not in the least-degree interfere with my argument: I have been endeavouring to prove, and I thought with success, that the common law of England, laying aside the statutes, would not subject us to indictment, for any part of our conduct; and if it would, that such principles have never been extended to this country. But if we must pass through this dreary wilderness, like the children of Israel, of old, I trust we shall reach the promised land in security: If we must cross this red sea, I do firmly believe, there is a constitutional power in the jury, which will command the waves to recede as we approach, and the waters to divide, that we may gain in safety the shore, where we shall be welcomed by a verdict of acquittal.

When you hear it admitted that this indictment, is without precedent or example in the annals of the state, ought they not to produce some new act of the legislature regulating the wages of labourers, and fixing the *maximum* and *minimum* in the fluxion of time and circumstances. This is out of their power, and they now press you to usurp legislative authority and to enact the

law yourselves. I do not recollect any case in which the legislature have interposed, except in that of the innkeepers and bakers. In these they have been unsuccessful, though there was some plausibility in the attempt to impose restrictions on those to whom the state granted the privilege of a license. Such laws cannot be executed. It is in vain to fix the price of every glass of wine, toddy or grog, that a tavern keeper may sell.

I must confess, if prices are to be regulated, the legislative body should perform the task, and let us see what political doctors will undertake it. I hope, if they fix the wages of journeymen, they will settle the rent of every house in town, and every farm in the country; that they will establish permanently, the price of coffee, tea, sugars and salt; set a value on all dry goods, particularly boots and shoes which will bear a reduction, and then enter the market to reduce beef, eggs, and butter, &c. to a proper standard!

I feel this cause of great importance, not merely as it concerns the defendants, but the community. It is with some personal inconvenience, that I extend my argument; as I am obliged to leave town the moment I leave this bar. I cannot conclude, however, without adding some further remarks.

In this last contest between the journeymen and the masters, the weaker power against the stronger, (for whilst the masters *may* loose the profits on a good job, the journeymen may want bread) we have been unsuccessful, after a struggle to obtain the same wages with our fellow labourers in New-York and Baltimore: we have been compelled to yield and submit to the former reduced prices for our work. The masters have been completely triumphant, and victorious as they are, they persist in this cruel prosecution! They have already accomplished all they asked, what can they desire more? Is it their wish to alarm, terrify, and persecute us; until they reduce us to the servile state of vassals? You have all heard, gentlemen, of the fable of the hen and golden egg. I fear it will be verified in the conduct of the masters. They grasp at too much! They are not satisfied, with the rapid rate at which they are at present amassing wealth. They wish to make their fortunes by

a single turn of the wheel. They may destroy the source from whence the golden streams flow. They may, and I believe, will banish every good workman from this city, if they continue this system of persecution with success. You, gentlemen, may stop their career. For your own interests, for theirs, and for the sake of the community, I beg and entreat you to arrest the arm of vengeance. They know not what they do. If you do not protect us by your verdict, the court must and will punish us. Their judgment may render us infamous. Those workmen who are not chained to the spot, will fly the city; and we who are bound, like victims to the altar, would prefer banishment, to a sentence that may consign us to a prison for years, and deprive us of credit and character for life!

*Mr. Recorder*....If the law is, as laid down by the opening counsel for the prosecution, and the defendants are guilty, as stated in the indictment, punishment will and ought to follow. If the jury listen to the fact and the law, and are satisfied to find a verdict of guilty, they are not to consider the punishment. That is the province of the court, to direct, and the duty of the judge to pronounce. If the masters are criminal for a combination, as has been intimated, they are equally liable upon conviction to punishment. The law is equal to all, rich and poor. The right of association is also equal. You ought not to address their passions on a point of law.

*Mr. Rodney*....Sir, I am incapable of touching the feelings, or exciting the passions of the jury. I possess no such powers. Nature has not been so bountiful to me. I was pressing a point upon the consideration of the jury, of the first importance to my clients, and I apprehended within the fair province of an advocate. It is not my interest, nor would it comport with my character, holding a seat within this bar, to stir up any opposition against the due course of proceedings, or the legal, settled practice of the court. I am sure, sir, you know me better.

*The Recorder*....I do sir.

*Mr. Rodney*....your honour will recollect, I denied the law, urged on the part of the prosecution, and disputed their authorities under such circumstances, I have



a right to expatiate on the extreme hardships of my client's case, of which you must be sensible. The court listened to, the mournful tale of Mr. Bedford's losses, and the melancholy story of Mr. Harrison's distresses. If it were not regular to permit the jury to hear these doleful ditties, why was the counsel suffered to recite them? I must be allowed the privilege of a set-off when they descant on the loss of the profits on the 4000 dollar contract, I must be permitted to reply, that they lose a little money and we lose our living. In this manner I pay them in their own coin. It is regular currency, and no counterfeit

Gentlemen, you have a most solemn and all important question, submitted to your consideration and decision. You have heard the testimony and patiently attended to the various facts stated by the witnesses. You will hear, after the argument is closed, the sentiments of the court. I shall always inculcate a just, manly and respectful deference to their opinions, even in a criminal case, but not an implicit, humble and servile submission. You will remember, that you have a constitutional power to decide the fact and the law. You are bound by the most solemn and sacred obligations, to guard and to watch with vestal vigilance your privileges. The court will zealously maintain their just rights, to use the language of a great and good lawyer, "*if the opinion of the judge must rule the verdict, the trial by jury would be useless.*" You are pledged to your country and your God, to give a verdict according to the sincere unbiassed dictates of your consciences. Should you give a verdict in favour of the defendants, no earthly power can set it aside. If you acquit us, we shall stand acquitted indeed. Let me beseech you, to remember, that the precedent which you set, will be an example to future juries. The law which you establish in this case may hereafter be executed on yourselves. Your children, or your children's children, may fall victims to your decision. When at the prison door, they are uttering with tears in their eyes, the language of complaint against the hard sentence that consigns them to a jail, they will be told *that you their fathers had pronounced their doom!*

I am not unacquainted with the argumentative talents of the concluding counsel. I am aware of the zeal and ability with which this prosecution will be pressed. But I see men of intelligence and integrity on this jury, who have firmness and independence, and who will not suffer their minds to be warped by any exertions of counsel.

“..... Wealthy men,  
 “ That have estates to loose, whose conscious thoughts  
 “ Are full of inward guilt, may shake with horror,  
 “ To have their actions sifted, or appear  
 “ The judge: But we that know ourselves  
 “ As innocent as poor... that have no fleece,  
 “ On which the talons of the griping law  
 “ Can sure take hold, may safely smile on all  
 “ That can be urged against us.”

One word in reply to the observations on the subject of aliens. From the moment we declared independence, we stood with open arms to receive the oppressed of all nations and countries. I shall always rejoice in giving them a hearty welcome to our free shores. We want workmen of every kind. The harvest is abundant, but the labourers are few. Let us preserve this asylum.... It is the last retreat of freedom and liberty. If, notwithstanding the blood and treasure expended, to release us from worse than Egyptian bondage, we still lust after the *flesh-pots*, we may adopt the English code entire, and return to servitude. I am labouring to prevent this fatal reverse, but if you will bring us again under the yoke, the fault will then be yours, and the consolation mine, that I endeavoured to prevent it, although I must suffer in common with yourselves.

I agree with the recorder most perfectly in one sentiment, that the law should be no respecter of persons ... like the light of the sun, it should shine on all. Whether they are as rich as Cræsus, or as poor as Belisarius:.... whether their complexions be as black as jet, or as white as the driven snow!

I call on you, then, in the name of the law which we have not violated, by that justice which you are sworn to dispense, for a verdict of acquittal. This will increase our commerce, encourage our manufactures, and promote the peace and prosperity of this flourishing city.

In the fullest confidence that such will be your verdict, I here most cheerfully submit the case, without any further observations, to your decision.

## MR. INGERSOL.

It is an observation as old as trite, but perfectly true, that the understanding is not to be trusted when the passions are engaged. Mr. Rodney has pursued the maxim of the ancient orators of Rome; to make his clients the favourites of the audience; in this mode of defence he has been ingenious and impressive.

Confident in the merits of my cause, asking no favour for my clients I shall not imitate the example. I will endeavour to comprise my arguments into as short a space as possible: I will endeavour to avoid uttering a word that shall not bear directly upon the cause, as the facts appear in evidence, and the application of the law to that evidence.

Extremes are frequently separated by very narrow limits; virtues are sometimes confounded with their opposite vices; we need not go abroad to know that the most licentious acts are perpetrated under the sacred name of liberty. I will tell you my sentiments, on what has been the subject of much declamation, without reserve. I say, that clubs and self-constituted societies are legal, useful, and proper to be encouraged: you cannot reach the defendants on that ground, for my part I will not attempt it.

If, however, they usurp power, abridge the rights of others to extend their own, it is an aristocracy not the less detestable, that it moves in a small sphere. When an association of men, whether incorporated or not, call it freedom when only themselves are free....I shall oppose them as long as I can speak out my sentiments. Let them confine themselves within the rule of law, let them exercise their legal right, and they never will be molested by me.

The defendants formed a society, the object of which was....What? That they should not be obliged to work for wages which they did not think a reasonable compensation? No: If that was the sole object of the society, I approve it....No man is to work without a reasonable compensation: they may legally and properly associate for that purpose. But when we allow the rights of the poor journeymen, let us not forget those of the rich employer, with his wedges of gold, his bars of silver,



and wings of paper stock, mentioned by Mr. Rodney : no, we will not do that. The picture of justice which is there....no, it is removed to Lancaster\*....is represented blind, incapable of discriminating between the parties by appearances of wealth or poverty....she feels the merits of the cause, as these preponderate in her Golden scales. If they go beyond this, and say we will not work, but we will compel the employers to give more, not according to contract, but such as they separately think themselves entitled to receive.

Let me here make one remark, not in the regular course of my argument, but which may be useful in removing improper impressions from your minds. You have been told of the danger of a conviction, and cautioned against subjecting the defendants to the villanous judgment which disqualifies a man from being a witness, a juror ; which subjects his lands to waste, and his house to be rased, &c. This is all a phantom ; no such thing can take place here....the punishment may be fine and imprisonment, or fine, or imprisonment, and that fine may be one cent. You will find, when you hear the common law explained, that common law and common sense are the same thing. When a conspiracy to injure another by fraud, trick, or perjury, was entered into, was by the ancient common law so punished ; but at this day, it is not so even in England.

The first feature of compulsion in this society, to compel the employers to give the wages they demand....is, that strangers are forced to join their body on the penalty of embarrassment, and being denied the means of earning their own support....the members are denied the liberty of separating, and their rules are enforced by pains, penalties, and fines ; threats, and even violence. It has appeared to you, that the public peace has been violated by the members of the society as well upon the journeymen as the employers....And the rising trade, prosperous manufactures, and flourishing commerce of the city, has been interrupted by the defendants, going beyond the line established by law. I have no hostility against these men, they are a valuable and useful part of the commu-

\* There was formerly the state arms, surmounted with the emblem of justice, over the judges' seat, now fixed in the representative chamber at Lancaster.

nity; they ought to be, and will be encouraged and protected. I make no attempts to take away their rights, I only say they must not trespass on the rights of their employers.

I shall, for perspicuity sake, class my observations under two heads.

First, whether any conspiracy exists, and what is its object, nature, and extent?

Second, What part have the defendants, according to the evidence, taken in carrying into execution such combination?

In the first place, what is this society, so terrible in its effects, so secret in its formation, and which exercises an authority which the legislature could not confer?

You shall have no fanciful statement by me: I discard my own evidence for the present: I take the representation of their own leading witness.

I call upon Mr. Franklin to attend to my statement of the testimony, and to correct me if I mistake.

James Keagan said, (for I asked him myself) "that if a journeyman comes here from a neighbouring state, or Europe, we *insist* that he shall join our society." He goes on and states, "or we will neither work, nor suffer any of the society to work with him in any shop where he is employed, until he is turned away." And that the society is to fix the rate of wages, and whoever deviates from the rule prescribed, is liable to all the penal consequences as if he never had been a member.

Now, what is the complaint? Last October or November, in conformity with this article of the constitution, they entered into an agreement to obtain an advance of wages, and to punish, as heretofore stated, all who shall contravene this regulation. I pass over without insisting on the aggravating circumstance, that even lodging in the house with the offender is forbidden....I pause to consider, whether the combination I have stated is lawful.

We have heard something said of the alien: I say, beckon him over, and protect him....When he reaches your shore, treat him kindly. But is this liberal conduct? Is this protection? You shall join the society, or ....or, in the language of the priest, or we will consider you as the enemy of heaven and of man.

I do not stop to consider what has been said of the sufficiency of the indictment, that is exclusively for the consideration of the court.

At the same time, you ought to know the nature of the charge, otherwise it will be impossible you can with propriety say, guilty or not guilty.

The indictment is for a conspiracy: I will give you a definition of the expression, unembarrassed, without being obscured by technical words, Latin or English.

4 Christian's Black. p. 136. Note 4. "Every confederacy to injure individuals, or to do acts which are unlawful or prejudicial to the community, is a conspiracy." This is all the definition I want. Recollect, that as to my facts, I do not hazard contradiction in what I say thus far; I am not here stating positions on doubtful and contradictory evidence, I go upon conceded ground.

The constitution is in writing; it is not produced: they have the resolutions and bye laws in their custody: but we did not give them notice to produce it; the defendants are neither president or secretary, but as members they could have access to the book:.....if they thought it material to their defence, no doubt they would have produced it; if they do not, it must be because it would not aid them. But the combination under the name of a turn-out, they have avowed and undertake to justify.

Analyze the resolve of the meeting of the 29th of October, 1805; take it member by member, let common sense dictate the result.

Let me not be misrepresented, I will endeavour to speak so plain as not to be misunderstood even by the most careless hearer.

I disclaim, I reprobate with indignation, the idea that a journeyman shoemaker is obliged to work for less wages than he thinks a reasonable compensation for his time and labour. If they do not get them, they have a right to go to New-York or Baltimore. Mr. Rodney says, these things will find their level like water: so they will, if there be no improper combination to force journeymen out of the employer's shop.

The resolution is founded on the constitution, both are virtually included in the vote for a turn-out; the



nature of the last must be determined by the character of the two former.

In the turn-out there is contained the claim of authority, that every journeyman cordwainer coming into the state shall join the society.

What right have they to say this?.... The stranger is not to make his choice; he is not left to exercise his free will; he is not to regulate his conduct by his own judgment, in this important particular. I am not now advocating the cause of the masters, but of the stranger and alien. How can the society justify this conduct? this, says Mr. Franklin, is only saying that they will not keep company with him, and every man is at liberty to select his associates.

It is not so; it is attempting all that is possible by them, adopting the most efficacious means to compel him to join or be starved.

They reduce the journeymen to depend on their funds at will, to prevent their starving; let Job Harrison tell his story....let him tell what happened. You have heard it from his own lips, I will not reiterate the affecting narrative.

It is preventing him from obtaining employ; it is threatening the employer if he engages him as a journeyman. The man himself is distinguished by the opprobrious name of a *scab*; the shop in which he works is shunned as an infected place.

Smith's wealth of nations has been read, to shew you that the masters must invariably get the better of the journeymen in a contest for wages; true, it is so; where laborers are numerous and the work not sufficiently ample for all. But in a country where laborers are scarce, and work encreasing, the stranger who comes into it, must submit to such associations or fall a victim. It is a measure to force from the employer wages he has not contracted to give, by preventing journeymen from going into his service.

They say, it is no compulsion:....Is it no compulsion on an employer?....Where is the employer who would retain one man, and lose twenty? It is true Mr. Bedford did this, but who is the other?....When the contest is, whether one man shall be retained or left without work, or whether twenty, when the employer makes

a profit in proportion to the number of journeymen working for him, the question admits of but one answer?

The alternative then, presents itself, you must either approve the principle as asserted, or find the turn-out an unlawful agreement. As the measures they adopt are fairly to be considered of a compulsory nature.... The present question is, is such a proceeding lawful? Here a great subject of inquiry offers for consideration. I contend, that to force a man to become a member of any society whatever, is inconsistent with the inalienable rights of man.

Weigh this matter fairly in the scales of reason; apply it to societies the most important, or to those of a secondary and less important description.

Consent freely and voluntarily given, is the only legitimate foundation for governmental authority. Is it in the United States, the asylum of liberty, that I hear a contrary doctrine insisted upon, by those who call themselves its most zealous defenders.

Consult Locke; ask Mr. Paine; let the patriotic, the Republican, the Democratic judge Tucker, solve the question?

Did you never read the beautiful description, by Mr. Curran, of the transformation of a slave into a freeman, by treading on British ground? Has the pavement of Philadelphia an opposite effect? Does our atmosphere sink the majesty of the man, and render the respectable visitant an abject pauper at the mercy of the township, unless he will resign his independence of opinion the true characteristic of a citizen.

An allusion was made to a remark of Mr. Hopkinson, that this was not an incorporated society. We have two modes of making incorporations: under a standing rule of the act of assembly, by the attorney general, judges and governor: for charitable and religious institutions, or by special law of the legislature for instances not included within the general provision or the enumerated cases.

Do any of these incorporated companies compel people to join them? Are they less privileged in this respect, than voluntary associations that are not incorporated?

Say the opposite counsel, if we are right in our complaint, we are wrong in the selection we have made of a remedy. I insist it has not one, or some, but all the characteristic features of a conspiracy. Was it no damage to reduce Mr. Bedford's journeymen from twenty-four to four or five? To have a capital left unemployed, and an exportation of such magnitude, that one employer sent out 4000 dollars a year, cease at a moment?

If a damage, say the opposit counsel, it was no injury; we had a right to take the measure whatever you might lose by it.

It was both injury and damage, as you had no right to interfere between the employer and others engaged in his employ. You did not content yourself with not keeping company with those employed, who did not conform to your rules, you *scabbed* the shop, and the master as well as the journeymen.

Your resolution engaged you to refuse eating at table with the supposed offender, or lodging in the same house; and excluded him even from your charity. This is not punishment! It is a species of civil excommunication, a proscription; the most determined spirit must yield to so unequal a contest. The most terrible sentence in the Roman commonwealth, was denounced in the terms in interdicting the criminal from the use of fire and water.

It was not only a confederacy to injure individuals, it was an agreement to do acts which are unlawful. It is a maxim of the common law, so much abused and so little understood....*Eve utere tuo ut aliena non ledas*; exercise your own rights, but take care not to injure others.

It is a measure highly prejudicial to the community, and if not effectually checked, congress will be obliged to take off the duties on articles made of leather, so far as respects boots and shoes, instead of stopping the importation, as is contemplating in a resolution now before them. Foreign manufactures must be introduced, and domestic laid aside, or much discouraged. The master employer may be injured, but the journeymen will be ruined; the former can best stand the shock, and Mr. Franklin has read Smiths wealth of nations to prove it.



An attempt has been made to find some apology for this combination, the proceedings are imputed to the masters associating.

Now, what are the particular acts brought home by the evidence, to the defendants in this indictment? They are of two kinds...the proceedings in the society, and the part they took out of the society: this will be found to include them all. It applies to Mr. Dubois, he was a member of the society as early as the year 1795, active, influential, and leading; the others are proved to have acted at the late turn-out.

This is a proper opportunity to trace the rise, progress, and present state of the business, from which it will appear a precipitate measure, unadvised and unjust. I was happy to obtain from their witness data: facts on which we can reason, free from the prejudices of the parties. I take the amount of wages from Mr. Kegan, the prices from Mr. Young; my reasoning and calculation will therefore be founded entirely on their own evidence.

Here we have the particulars perfectly distinct, for the same work, plain boots ten or twelve years ago were 12s. 9d. at the time of the last turn-out and now 1l. 2s. 1½d. Here is an encrease of wages almost double. I ask, why I appeal to you. The pretence is, the rise of everything else. I say marketing was as high in 1796 and 1794 as since; boarding the same; house rent not more; carpenters work and materials cheaper now than then: this I know by actual experience, having built at considerable expence during the first period. And you will recollect that congress sat here at that time; all the officers of the executive government; the legislature of the state; the supreme court, of the United States, and all its officers. Persons having business to transact with them, were here itinerant; these circumstances encreased, rather than depressed the prices at that time. In their work there is no difference, except that formerly boots had stitched rands worth 1s. 6d. now this work, is omitted.

Another ground urged, was the rise in the price of boots; this will fail them also on a fair investigation. Mr. Young says, boots that formerly sold from five to five and half dollars, now bring seven dollars; what formerly brought six and a half, now sell at nine dollars.

Let us compare...to keep the same proportion in the rise of prices as wages, the boots formerly at five and five and a half, must sell at this time, instead of seven, at eight dollars seventy cents. To observe the same proportion in the other instance, the rise should be from six and a half to twelve dollars, and one cent, instead of nine dollars a difference of three dollars and more, less in the rise of price than wages, which the defendants insisted should be increased.

You see clearly then, that this valuable class of men (and such they certainly are) the journeymen shoemakers, are stronger in their passions than in their judgment, for of all their witnesses not one appeared to have made these calculations. Further, to shew the great impropriety of their proceedings, let it be recollected, that the price of fancy-top-boots was settled, as all those things ought to be, by agreement between the employers and journeymen. The same witness, Mr. Kegan, says, that on this same article they insisted on a rise of three quarters of a dollar on the price fixed by themselves; this was one of the grievances that occasioned the last turn-out, and for some time kept the city in an uproar. They ought not to be obliged to work except for wages satisfactory to themselves, nor ought the employers to be obliged to pay beyond their contract.

This at most, it may be said, will in part apply only to Mr. Dubois; to constitute what is called a conspiracy you must have two implicated. I adopt the principle, and proceed to shew, that every other defendant is equally liable to the charge, as Mr. Dubois. At the turn-out of 1799, they were all members of the society, distinguished in the cabinet or in the field, in forming resolutions and carrying them into execution. But here is a justification proudly insisted on; it was a turn-out, not to raise, but to prevent a reduction of wages, by the combination of employers. I deny both the premises and conclusion; it is not so; if it was, it would not justify the measure: if an alteration of contract is reasonable, it must be done by contract, not by compulsion.

Look at the wages; how came the wages at that rate, by a previous turn-out in 1798? the employers, only wanted to get back to the contract price.



What apology for the last turn-out, it was avowedly to raise their wages, not to avoid reducing them? Was it the provocation of the masters in 1799? no; the masters had submitted, as they have proved by the evidence given in by themselves. This was an example which they ought to have imitated, so far they ought to have gone further was not justifiable.

Further, let their own proposals speak for themselves; the ground and extent of their complaints, and the remedy proposed. A notification ushers into day the determinations of the body, to dictate the terms on which alone the work shall be done. All consequences are now legally, constructively, and reasonably imputable to every man who has participated in the transaction. I will then proceed to examine the evidence as applied to the several defendants; I begin with the first named in the indictment... Mr. Pullis.

The first witness, Mr. Harrison, says expressly, that Mr. Pullis belongs to the association, the objects of which are to support present wages, and to obtain such wages from time to time, as they may think proper to ask. This witness came into the country in 1794, and he mentions that wages were raised; he had the information from Mr. Bedford, before he had been long enough to know that there was such a society as this body of associated journeymen cordwainers. From the same source of correct information, we find that no longer a period had elapsed than from 1794 to 1798, than another turn-out took place to raise wages. A third in 1799, to prevent their being brought back to the contract price from which they had been raised by a turn-out in 1798.

Here let me answer a suggestion of Mr. Franklin, that Mr. Blair, a prosecutor himself, committed the offence for which he prosecutes; he forgets that Mr. Blair has been an employer more than four years, and therefore that the charge is altogether a mistake. And here this witness mentions an anecdote of the compulsory nature of their proceedings, which is not only enough to convince the judgment, but to affect a heart of adamant. Dobbins had lost his wife, his children were out at board, himself making soldiers shoes or boots... yet he was compelled to desist; tears could not



avert the sentence, because Mr. Case, for whom he wrought, was not in their good opinion. He not only might not work at under wages in making shoes and boots, but not at full wages in making even a candle box for Mr. Case.

Their measures are said to be not compulsive; what then are they? Recollect the circumstance....Mr. Bedford is notified, "you have *scabs* in your shop, turn them off, or".....Well, he neglects to comply....the shop is *scabbed*: he is left without his journeymen: in a great proportion, ruin awaits him: he talks of investing his capital in the dry good business. I shall be driven from the city, he tells the witness, if this continues; and concludes with an honourable declaration....at all events, I will not discharge you let consequences be what they may; while you do your duty, we will sink or swim together!

The employer is obliged to make a journey to the southward; his time being unemployed; he comes home with orders he cannot fulfil.

They say, no force was employed....Force, yes they threw a potatoe through the window which passed near his face, and that the author of the malicious injury might be known, it contains the ends of half a dozen broken shoemaker's-tacks. For a further illustration of this point, see the testimony of William Forbey, Samuel Logan, and Andrew Dunlap.

I understand that the shop of Mr. Bedford remained under the interdict two or three years, during which his business was in a great degree suspended. Mr. Harrison remained a *scab* until we find him humbly soliciting restoration, by means of secretary Dempsey in 1802, at Trenton.

We now reach the last turn-out, which, it is true, Mr. Dubois opposed, but it is equally true, that he afterwards was a zealous committee man to carry it into effect. It is true, no men or shops were *scabbed* at the last turn-out, because the journeymen yielded; but the combination was formed, and the business suspended in a great degree for six or eight weeks.

As implicated in the conspiracy of last autumn, I prove by this witness, Gorge Pullis, John Harket, John Hepburn, Dubois, Undrel Barnes, and Keimer. The

*votes, resolutions, notifications, domiciliary visits, and tramping committees*, are the effects of the measures taken by the defendants. By another witness, James Cummings, we fill the chasm, and add the remaining names of Peter Pollen and George Snyder.

By implication of law, every member is equally responsible for all the proceedings: to this point, is 2 M'Nally, p. 610 and 636. But having positive proof as to the defendants, it supersedes the necessity of relying on implication: as to breaches of the peace, we have half a dozen in evidence; it is not necessary for me to recapitulate, you have heard the proof. Mr. Barnes threatened another rise of half a dollar, when he was giving notice of the rise in last October. Mr. Blair's testimony proves a beating of his journeymen, for being *scabs*, on the evening of the day consecrated to holy rest, and avowed by the members of the society.

Mr. Franklin told you this was a cause of importance; it is eminently so: and it depends on your verdict, whether this manufacture shall flourish or decay.

These defendants call on an employer, Mr. Montgomery, who had orders at the time, from St. Thomas's, New-Orleans, and Charleston, and I pray you to attend to what passes. Pollen, Snyder, Barnes and Pullis, if not Harket also, are the men of the defendants who call, and I will give you, without comment, their language. They demanded certain wages, and asked whether the employer would or would not give them? and added, *if they will not we will take means to make them.*"

Though it is not necessary to the cause, yet for public satisfaction, I will shew, that the wages they wish raised, are high enough; that a rise would be prejudicial to the employer, to the public, and more particularly to themselves. We have had from the opposite counsel an explanation of what may be called a custom, 7 Viner, p. 165, A 2. Is it to the common law, as found in English books, that the defendants appeal for a defence. That is, *jus non scriptum*, and made by the people only of such place where the custom is. Have the citizens of Philadelphia imposed upon the employers the duty of paying the wages demanded by the defendants? We claim no immemorial custom: we say it is a matter of contract, neither employers or journeymen have a right to insist,



or the other shall pay or receive a rate of wages, to which they have not freely consented.

We are told, and truly told, from 3 Burr. p. 1698 and 1731, that private injuries are not to be redressed by indictment; but the question still remains, whether the combination of the defendants, falls under the one or the other denomination? Under the class of private injuries, add our antagonists, and in support of the assertion, they cite the case of *Hart v. Aldridge*, from Cowp. p. 54. Not a step can they progress, without calling to their aid the common law, which expressly determines their combination to be a conspiracy. See 1 Hawk. p. 348. An action for seducing servants! It is not our case; we do not complain of individual seductions. We charge a combination, by means of rewards and punishments, threats, insults, starvings and beatings, to compel the employers to accede to terms, *they* the journeymen present and dictate.

If the journeymen cordwainers may do this, so may the employers; the journeymen carpenters, bricklayers, butchers, farmers, and the whole community will be formed into hostile confederacies, the prelude and certain forerunner of bloodshed and civil war.

My learned and accurate colleague, is charged with the absurdity of saying, that whatever is done by several is a criminal conspiracy. The position was, that the same things may become criminal, when the subject of a combination, which are innocent, as the occasional acts of an individual.

The case of *Macklin, the player*, in 2 M<sup>c</sup>Nally, p. 634, exemplifies with great propriety the distinction. I may hiss or clap a player, but may not enter into a combination to drive a particular man from the stage.\*

Instances are mentioned by our antagonists, which answer the same purpose. A student comes to town, the law society insist he shall join or they will put a mark of infamy upon him....He shall be shunned as a murderer, or one infected with a disease whose society is pollution. We will hunt him from office to office; if we meet him in the street, we will insult him; and we will quit the study of every lawyer in which he is suffered to read a book.

\* See this case in Appendix G.



Another case mentioned is, if possible, replete with yet stronger conclusions against those who use the arguments against us. It was said, any one lawyer may refuse to be counsel for the journeymen shoemakers, prosecuted at this time, might the whole bar have entered into a combination to refuse their aid; with this addition, that if a lawyer comes here from a neighbouring state he shall join in this confederacy, or we will unitedly declare hostility and embarrass him in every practicable method to induce him to abandon your defence.

The cause next assumes a seriousness that is alarming; the existence, operation and respectability of the common law, is directly attacked. The counsel are right in their plan of defence; there is a direct collision between the law and the conduct of the defendants.... which...is to controul? is the question.

You have heard a book cited against us, which contains the warmest eulogium upon the common law ever penned by man....it will be found in the third volume of the late judge Wilson's work, p. 16 and 18: also, 2 Wil. p. 43. 47.

Whence comes this enmity to the common law? It is of mushroom growth? Look through the journals of congress during the revolutionary war, you will find it claimed as the great charter of liberty; as the best birth-right and noblest of inheritance. Cæsar A. Rodney, the revolutionary patriot, hazarded his life to secure and perpetuate the blessing.

What are its characteristic features, possessed exclusively by itself? You have heard of Mr. Curran, the friend of the people, the orator of the age, let him speak of English criminal justice. See Curran's Forensic Eloquence p. 375.

But the common law is in some respects faulty, as in the case cited from 4 Black. p. 124, and 4 Inst. p. 143. 'The sun too has its spots, but will you extinguish that luminary from the firmament.

But the common law, as adopted and practised in Pennsylvania, is the least exceptionable criminal code in the world. In England, it is said to be sanguinary and cruel. In England there are 176 offences punisha-

ble by death, of which there are only 16 so punished by the common law.

Why do I love the common law, especially the criminal part? I will tell you, and I think you will say that I have reason on my side, as I am one of the people. Because, as Mr. Randolph says, it enabled Horne Took, Thomas Hardy and Mr. Thelwall, with a jury, to pass unhurt through the flames of ministerial prosecution.

Because, to the common law we are indebted for trial by jury, grand and petit, without the unanimous consent of which latter, I cannot be convicted.... Because, it secures me a fair trial by challenges, the laws of evidence, confronting me with my accuser, and exempting one from accusing myself, or being twice liable to trial for the same offence.

These things would constitute a *redeeming spirit* against all attacks, were its faults twice as numerous as they are.

It condemns these men, it is said, to incapacity as witnesses and jurors.... strange misunderstanding! a fine of our court is the only necessary consequence. It is not otherwise in England, as I remarked before, unless the conspiracy is for lying or perjury.

Abolish the common law, judging not by instances, but by principle, where are you? Shew me an indictment of any kind, even for assault and battery, it is bot-tomed on common law; with us we have no cause of proceeding in criminal cases, but by the modes of the common law, except in cases of murder or treason. The legislature may alter the system, but while it remains it is the law of Pennsylvania.

I will not trespass further, but now leave you to the charge of the court. The counsel for the defendants, and the counsel for the prosecution, differ much as to what is the law. Our feelings for our clients may bias our judgments, but the decision of the bench on this point, is free from every species of extrinsic influence.

A word as to the policy of the measure on this, as on every other occasion. Providence has wisely ordered matters so.... that self love, and social are the same; and the line of conduct we have pursued will, in the end, mutually promote the interests of both the plaintiffs and defendants. They will hereafter leave every price to agreement: under this impression, I leave the cause to your decision.

## MR. LEVY.

This laborious cause is now drawing to a close after a discussion of three days; during which we have had every information upon the facts and the law connected with them, that a careful investigation and industrious research have been able to produce. We are informed of the circumstance and ground of the complaints, and of the law applicable to them. It remains with the court and jury, to decide what the rule of law is; and whether the defendants have, or have not violated it. In forming this decision, we cannot, we must not forget that the law of the land is the supreme, and only rule. We live in a country where the will of no individual ought to be, or is admitted, to be the rule of action. Where the will of an individual, or of any number of individuals, however distinguished by wealth, talents, or popular fame, ought not to affect or controul, in the least degree, the administration of justice. There is but one place in which to determine whether violation and abuses of the law have been committed....it is in our courts of justice; and there only after proof to the fact: and consideration of the principles of law connected with it.

The moment courts of justice lose their respectability, from that moment the security of persons and of property is gone. The moment courts of justice have their characters contaminated by a well founded suspicion, that they are governed by caprice, fear or favour; from that moment they will cease to be able to administer justice with effect, and redress wrongs of either a public or a private nature. Every consideration, therefore, calls upon us to maintain the character of courts and juries; and that can only be maintained by undeviating integrity, by an adhesion to the rules of law, and by deciding impartially in conformity to them.

Very able research has been made in this enquiry, and every principle necessary for your information has been laid before you. As far as the arguments of counsel apply to your understanding and judgment, they should have weight: but, if the appeal has been made



to your passions, it ought not to be indulged. You ought to consider such appeals as an attack upon your integrity, as an attempt to enlist your passions against your judgment, and, therefore, listen to them with great distrust and caution. If this enquiry had been confined to its proper object and its merits, it need not have been extended to the length to which it has been drawn out, but many circumstances foreign to the case, have been brought into view. An attempt has been made to shew that the spirit of the revolution and the principle of the common law, are opposite in this case. That the common law, if applied in this case, would operate an attack upon the rights of man. The enquiry on that point, was unnecessary and improper. Nothing more was required than to ascertain what the law is. The law is the permanent rule, it is the will of the whole community. After that is discovered, whatever may be its spirit or tendency, it must be executed, and the most imperious duty demands our submission to it.

It is of no importance whether the journeymen or the masters be the prosecutors. What would it be to you if the thing was turned round, and the masters were the defendants instead of the journeymen? It is immaterial to our consideration whether the defendants are employers or employed; poor or rich.... Whether their numbers are diminutive or great. If they have done wrong, and were ten thousand strong, I should look upon myself guilty of a breach of my oath and of the law, if their numbers protected them from justice or prosecution, from plainly declaring my opinion, if I thought them guilty: while I set here, however distinguished for wealth, or talents, respectability, or numbers the defendants may be, if they have violated the law.... I trust I shall have firmness enough to say so, regardless of what the world may think of me or of popular abuse. This is the duty of the judge, and also of the jury. If they decide one way when one man is implicated, and another when twenty, the rights, the liberties and privileges of man in society, can no longer be protected within these hallowed walls. Numbers would decide all questions of duty and property, and causes would be hereafter adjudged, not by the weight of their reason, but according to the physical

force of the parties charged. This jury will act without fear or favour; without partiality or hatred; regardless whether they make friends or enemies by their verdict....they will do their duty...they will, after the rule of law has been investigated and laid down by the court, find a verdict in conformity to the justice of the case.

If this, gentlemen, is your disposition, there are only two objects for your consideration.

*First...* What the rule of law is on this subject?

*Second...* Whether the defendants acted in such a manner as to bring them within that rule?

[Here the recorder referred to books of authority.]

No matter what their motives were, whether to resist the supposed oppression of their masters, or to insist upon extravagant compensation. No matter whether this prosecution originated from motives of public good or private interest, the question is, whether the defendants are guilty of the offences charged against them? A great part of the crimes prosecuted to trial in this court, are brought forward, I believe, from improper motives: for example, the prosecutions against tipping houses are generally occasioned by a difference taking place between the buyer and the seller, when the one is nearly as much in fault as the other. In the case of the crime of treason, it is often one of the parties who impeaches the other, and a quarrel about the felonious booty often leads to the detection of the thief. If the defendants are guilty of the crime, no matter whether the prosecutor brings his action from motives of public good, or private resentment. The prosecutors are not on their trial, if they have proved the offence, alleged in the indictment, against the defendants; and if the defendants are guilty, will any man say, that they ought not to be convicted: because the prosecution was not founded in motives of patriotism? certainly the only question is, whether they are guilty or innocent? If they are guilty and were possessed of nine tenths of the soil of the whole United States, and the patronage of the union, it is the bounden duty of the jury to declare their guilt.

I am endeavouring to divest the case of what may prejudice its merits.

What are the offences alleged against them? They are contained in the charges of the indictment.

[Here he recited from the indictment the first and second counts.]

These are the questions for our consideration, and it lies with you to determine how far the evidence supports the charges, and how the principles of the law bear upon them.

It is proper to consider, is such a combination consistent with the principles of our law, and injurious to the public welfare?

The usual means by which the prices of work are regulated, are the demand for the article and the excellence of its fabric. Where the work is well done, and the demand is considerable, the prices will necessarily be high. Where the work is ill done, and the demand is inconsiderable, they will unquestionably be low. If there are many to consume, and few to work, the price of the article will be high: but if there are few to consume, and many to work, the article must be low. Much will depend too, upon these circumstances, whether the materials are plenty or scarce; the price of the commodity, will in consequence be higher or lower. These are the means by which prices are regulated in the natural course of things. To make an artificial regulation, is not to regard the excellence of the work or quality of the material, but to fix a positive and arbitrary price, governed by no standard, controuled by no impartial person, but dependant on the will of the few who are interested; this is the unnatural way of raising the price of goods or work. This is independent of the number of customers, or of the quality of the material, or of the number who are to do the work. It is an unnatural, artificial mean of raising the price of work beyond its standard, and taking an undue advantage of the public. Is the rule of law bottomed upon such principles, as to permit or protect such conduct? Consider it on the footing of the general commerce of the city. Is there any man who can calculate (if this is tolerated) at what price he may safely contract to deliver articles, for which he may receive orders, if he is to be regulated by the journeymen in an arbitrary jump from one price to another? It renders it impossible for a man, making a contract for a



large quantity of such goods, to know whether he shall lose or gain by it. If he makes a large contract for goods to-day, for delivery at three, six, or nine months hence, can he calculate what the prices will be then, if the journeymen in the intermediate time, are permitted to meet and raise their prices, according to their caprice or pleasure? Can he fix the price of his commodity for a future day? It is impossible that any man can carry on commerce in this way. There cannot be a large contract entered into, but what the contractor will make at his peril. He may be ruined by the difference of prices made by the journeymen in the intermediate time. What then is the operation of this kind of conduct upon the commerce of the city? It exposes it to inconveniences, if not to ruin; therefore, it is against the public welfare. How does it operate upon the defendants? We see that those who are in indigent circumstances, and who have families to maintain, and who get their bread by their daily labour, have declared here upon oath, that it was impossible for them to hold out; the masters might do it, but they could not: and it has been admitted by the witnesses for the defendants, that such persons, however sharp and pressing their necessities, were obliged to stand to the turn-out, or never afterwards to be employed. They were interdicted from all business in future, if they did not continue to persevere in the measures, taken by the journeymen shoemakers. Can such a regulation be just and proper? Does it not tend to involve necessitous men in the commission of crimes? If they are prevented from working for six weeks, it might induce those who are thus idle, and have not the means of maintenance, to take other courses for the support of their wives and children. It might lead them to procure it by crimes...by burglary, larceny, or highway robbery! A father cannot stand by and see, without agony, his children suffer; if he does, he is an inhuman monster; he will be driven to seek bread for them, either by crime, by beggary, or a removal from the city. Consider these circumstances as they affect trade generally. Does this measure tend to make good workmen? No: It puts the botch incapable of doing justice to his work, on a level with the best tradesman. The master must give the same wages to each. Such a

practice would take away all the excitement to excel in workmanship or industry. Consider the effect it would have upon the whole community. If the masters say they will not sell under certain prices, as the journeymen declare they will not work but at certain wages, they, if persisted in, would put the whole body of the people into their power. Shoes and boots are articles of the first necessity. If they could stand out three or four weeks in winter, they might raise the price of boots to thirty, forty, or fifty dollars a pair, at least for some time, and until a competent supply could be got from other places. In every point of view, this measure is pregnant with public mischief and private injury...tends to demoralize the workmen...destroy the trade of the city, and leaves the pockets of the whole community to the discretion of the concerned. If these evils were unprovided for by the law now existing, it would be necessary that laws should be made to restrain them.

What has been the conduct of the defendants in this instance? They belong to an association, the object of which is, that every person who follows the trade of a journeyman shoemaker, must be a member of their body. The apprentice immediately upon becoming free, and the journeyman who comes here from distant places, are all considered members of this institution. If they do not join the body, a term of reproach is fixed upon them. The members of the body will not work with them, and they refuse to board or lodge with them. The consequence is, that every one is compelled to join the society. It is in evidence, that the defendants in this action all took a part in the last attempt to raise their wages; Keimer was their secretary, and the others were employed in giving notice, and were of the tramping committee. If the purpose of the association is well understood, it will be found they leave no individual at liberty to join the society or reject it. They compel him to become a member. Is there any reason to suppose that the laws are not competent to redress an evil of this magnitude? The laws of this society are grievous to those not inclined to become members...they are injurious to the community, but they are not the laws of Pennsylvania. We live in a community, where the people in their collective capacity give the first momentum, and their



representatives pass laws on circumstances, and occasions, which require their interference, as they arise.

But the acts of the legislature form but a small part of that code from which the citizen is to learn his duties, or the magistrate his power and rule of action. These temporary emanations of a body, the component members of which are subject to perpetual change, apply principally to the political exigencies of the day.

It is in the volumes of the common law we are to seek for information in the far greater number, as well as the most important causes that come before our tribunals. That invaluable code has ascertained and defined, with a critical precision, and with a consistency that no fluctuating political body could or can attain, not only the civil rights of property, but the nature of all crimes from treason to trespass, has pointed out the rules of evidence and the mode of proof, and has introduced and perpetuated, for their investigation, that admirable institution, the freeman's-boast, the trial by jury its profound provisions grow up, not from the pressure of the only true foundations of all knowledge, long experience and practical observation at the moment, but from the common law matured into an elaborate connected system. Law is by the length of time, it has been in use and the able men who have administered it. Much abuse has of late teemed upon its valuable institutions. Its enemies do not attack it as a system: but they single out some detached branch of it, declare it absurd or intelligible, without understanding it. To treat it justly they should be able to comprehend the whole. Those who understand it best entertain the highest opinion of its excellence.... No other persons are competent judges of it. As well might a circle of a thousand miles diameter be described by the man, whose eye could only see a single inch, as the common law be characterized by those who have not devoted years to its study. Those who know it, know that it regulates with a sound discretion most of our concerns in civil and social life. Its rules are the result of the wisdom of ages. It says there may be cases in which what one man may do with offence, many combined may not do with impunity. It distinguishes between the object so aimed at, in different transactions. If the purpose to be obtained, be an object of individual interest, it may be fairly attempted by an individual.... Many are prohibited from combining for the attainment of it.



What is the case now before us?....A combination of workmen to raise their wages may be considered in a two fold point of view: one is to benefit themselves....the other is to injure those who do not join their society. The rule of law condemns both. If the rule be clear, we are bound to conform to it even though we do not comprehend the principle upon which it is founded. We are not to reject it because we do not see the reason of it. It is enough, that it is the will of the majority. It is law because it is their will....if it is law, there may be good reasons for it though we cannot find them out. But the rule in this case is pregnant with sound sense and all the authorities are clear upon the subject. Hawkins, the greatest authority on the criminal law, has laid it down, that a combination to maintaining one another, carrying a particular object, whether true or false, is criminal....the authority cited from 8 Mod. rep. does not rest merely upon the reputation of that book. He gives you other authorities to which he refers. It is adopted by Blackstone, and laid down as the law by Lord Mansfield 1793, that an act innocent in an individual, is rendered criminal by a confederacy to effect it.

In the profound system of law, (if we may compare small things with great) as in the profound systems of Providence....there is often great reason for an institution, though a superficial observer may not be able to discover it. Obedience alone is required in the present case, the reason may be this. One man determines not to work under a certain price and it may be individually the opinion of all: in such a case it would be lawful in each to refuse to do so, for if each stands, alone, either may extract from his determination when he pleases, In the turn-out of last fall, if each member of the body had stood alone, fettered by no promises to the rest, many of them might have changed their opinion as to the price of wages and gone to work; but it has been given to you in evidence, that they were bound down by their agreement, and pledged by mutual engagements, to persist in it, however contrary to their own judgment....The continuance in improper conduct may therefore well be attributed to the combination. The good sense of those individuals was prevented by this agreement, from having its free exercise. Considering it in this point of view, let us take a look at the cases which have been compared to this

by the defendants counsel. Is this like the formation of a society for the promotion of the general welfare of the community, such as to advance the interests of religion, or to accomplish acts of charity and benevolence? Is it like the society for extinguishing fires? or those for the promotion of literature and the fine arts; or the meeting of the city wards to nominate candidates for the legislature or the executive? These are for the benefit of third persons the society in question to promote the selfish purposes of the members. The mere mention of them is an answer to all, that has been said on that point? There is no comparison between the two; they are as distinct as light and darkness. How can these cases be considered on an equal footing? The journeymen shoemakers have not asked an increased price of work for an individual of their body: but they say that no one shall work, unless he receives the wages they have fixed, They could not go farther than saying, no one should work unless they all got the wages demanded by the majority; is this freedom? Is it not restraining, instead of promoting, the spirit of '76 when men expected to have no law but the constitution, and laws adopted by it or enacted by the legislature in conformity to it? Was it the spirit of '79, that either masters or journeymen, in regulating the prices of their commodities should set up a rule contrary to the law of their country? General and individual liberty was the spirit of '76. It is our first blessing. It has been obtained and will be maintained...we will not leave it to follow an *ignus fatuus*, calculated only to mislead our judgment. It is not a question, whether we shall have an *imperium in imperio*, whether we shall have, besides our state legislature a new legislature consisting of journeymen shoemakers. It is of no consequence, whether the prosecutors are two or three, or whether the defendants are ten thousand, their numbers are not to prevent the execution of our laws...though we acknowledge it is the hard hand of labour that promise the wealth of a nation, though we acknowledge the usefulness of such a large body of tradesmen and agree they should have every thing to which they are legally entitled; yet we conceive they ought to ask nothing more. They should neither be the slaves nor the governors of the community.



I thought it necessary to say this much, as this trial appears to have excited a great deal of interest in the city. The numerous attendants that we have witnessed during the course of the trial, shews that numbers of our fellow citizens wait the result with anxious expectation. ...It lays with you, gentlemen of the jury, to decide.

The sentiments of the court, not an individual of which is connected either with the masters or journeymen; all stand independent of both parties....are unanimous. They have given you the rule as they have found it in the book, and it is now for you to say, whether the defendants are guilty or not. The rule they consider as fixt, they cannot change it. It is now, therefore, left to you upon the law, and the evidence, do find the verdict. If you can reconcile it to your consciences, to find the defendants not guilty, you will do so; if not, the alternative that remains, is a verdict of guilty.

The jury retired, about 9 o'clock, and were directed by the court to seal up their verdict....Next morning the following circumstances took place.

Mr. Franklin requested the jury to be polled;

It was granted by the court.

On calling over the jury list, Mr. Wm. Henderson, the fifth on the Roster, said

The clerk will find a paper inclosed in the bill of indictment containing the verdict of the jury, subscribed with their names.

The clerk then read the paper referred to.

The reporter took it down in these words.

We find the defendants guilty of a combination to raise their wages,

Subscribed by the 12 jurors. *Note by the reporter.*

Calling at the clerks office, this 21st May, 1806. He learned, the papers above mentioned, was destroyed or missing, and to convince him such papers were of no importance. Mr. Serjeant tore up two verdicts, of a similar nature, in the presence of him and another person Saying the court take no cognizance of these sealed verdicts.

But after all, the verdict was entered on the back of the bill of indictment....guilty....

And the court fined the defendants eight dollars each, with costs of suit, and to stand committed till paid.



# APPENDIX.

( A )

*Rex vers. Elizabeth Sarmon.*

THE Court made no difficulty to *quash an Indictment*, (though attempted, by two or three Counsel to be supported) “ For that the Defendant for the space of *four* hours and *more together*, on every of the several days specified, (which were the first day of January 29 G. 2. and divers other days and times between that day and the day of taking the Inquisition,) with force and arms &c. at London, at the Parish of St. Martin within Ludgate, in the ward of Farringdon without, in London aforesaid, unlawfully injuriously and wilfully did *set place and keep* a certain person, (whose name was yet unknown to the jurors,) in and upon the common and ancient foot-way on the North-side of the public street there situate, called Ludgate-hill; *to Deliver* out certain *printed bills of her occupation*, to persons passing that way; which said person so set, placed and kept there, by her the said Elizabeth, did, on the said days and times, *remain in and upon* the said common foot-way *during* the several spaces of time aforesaid, *delivering and distributing* printed bills, as aforesaid; whereby the same foot-way, at those several days and times, was greatly *impeded and obstructed*; so that the liege subjects of our said Lord the King, there passing and residing, could *not so freely* go pass and repass in or through the *same way*, as they ought and were used to do: to the great damage and common *nuisance* of all the said subjects, and against the peace of our said Lord the King his Crown and dignity.”

The court held this to be a matter *not* indictable; and quashed the *indictment*.

## ( B )

Lord Mansfield....The objection to the fourth indictment is given up. The other three stand, all of them, upon the same ground. Nothing but the *Vi et Armis* implies force, every force and violence is a breach of the peace.

The case of *Rex. v. Bathurst* does not seem to me to lay down any such rule as "that *Vi et Armis* alone implies such a force as will, of itself, support an indictment." There, the fact itself naturally implied force: it was turning and keeping the man out of his dwelling-house; and done by three people. Three of the judges lay a stress upon that circumstance, of it's being an entry into a *dwelling-house*: and the parties who framed the indictment plainly had a view to indict for a *forcible entry*.

As at present advised, I should think the present case within those that justify the quashing.

Coming with a *pistol*, though possible, is not to be supposed.

If there be no doubt upon it, there is no reason to put the defendant to more expence.

Mr. Justice Wilmot thought that it ought to appear to be an *indictable* offence: for otherwise, in cases where there was no malice, the defendant might be put to a great expence without remedy or satisfaction.

The cases cited shew, "that such indictments have been quashed:" and that of *Rex v. Bathurst* being an entry into a *dwelling-house* makes that case no authority in this.

But *this* case stands indifferent, "Whether the offence is indictable or not:" whereas it ought to appear upon the face of the indictment "that it is indictable."

Therefore he was for quashing these three indictments.

Mr. Justice Yates concurred.

Therefore he was for quashing.

Mr. Justice Aston likewise concurred.

Lord Mansfield....Let the three indictments be quashed; and the rule be discharged, as to the other.

See S. P. determined accordingly, post p. 1706. *Rex v. Atkins*, the very next day after this; and *Rex v. Gillet*, on the same day; and pa. *Rex v. Bake and fifteen others*, on the last day of this term, 26th June 1765.

—

Rex *versus* Bake and fifteen others.

Mr. Dunning shewed cause why an indictment should not be quashed.

He called it an indictment for a *forcible entry*; and argued that an indictment for a forcible entry may be maintained at *common law*." He cited a case in *Trin.* 1753, 26, 27 G. 2. B. R. *Rex v. Brown and others*; and *Rex v. Bathurst*, *Tr.* 1755, 28 G. 1. S. P.

But, N. B. *This* indictment at present in question was only for (*Vi et Armis*) breaking and entering a *close* (not a dwelling-house;) and unlawfully and unjustly expelling the prosecutors, and keeping them out of possession.

Mr. Popham, on behalf of the defendants, objected "that this was an indictment for a *mere trespass*, for a *civil* injury; not a public, but a *private* one; a mere entry into his close, and keeping him out of it. The "*force and arms*" is applied only to the *entry*; not to the expelling or keeping out of possession: *they* are only charged to be *unlawfully and unjustly*. This is no other force than the *law* implies. No actual breach of the peace is stated; or any riot; or unlawful assembly. And he cited the cases of *Rex v. Gask*; and *Rex v. Hide*; and *Rex v. Hide and another*; (which, together with a note upon them, may be seen in the text and margin of page 1768.)

*Rex v. Bathurst* is the only case where the objection has not been holden fatal: and that was, because it was a forcible entry into a dwelling-house.

*Rex v. Jopson et al.* *Tr.* 24, 25 G. 2. B. R. was an *unlawful assembly* of a great number of people. [V. ante, pa. 1702 in the margin.]

Mr. Justice Wilmot....No doubt, an indictment *will lie at common law*, for a forcibly entry; though they are *generally* brought on the acts of parliament. On the acts of parliament, it is necessary to state the nature of the estate; because there must be restitution: but they *may* be brought at common law.

Here, the words "*force and arms*" are not applied to the whole: but if they were applied to the whole, yet it



ought to be such an *actual* force as implies a breach of the peace, and makes an *indictable offence*. And this I take to be the rule, “That it *ought to appear* upon the *face* of the indictment to be an *indictable offence*.”

Here indeed are 16 defendants. But the *number* of the defendants makes no difference, in itself: no *riot*, or *unlawful assembly*, or any thing of that kind is charged. It ought to amount to an actual breach of the peace indictable, in order to support an indictment. For, otherwise, it is only a matter of *civil* complaint. And this ought to appear *upon the face* of the indictment.

Mr. Justice Yates concurred. Here is no force or violence shewn *upon the face* of the indictment, to make it appear to be an *actual force indictable*: nor is any *riot* charged; or any *unlawful assembly*. Therefore the mere *number* makes no difference.

Mr. Justice Aston concurred. The true rule is “that it ought to *appear* upon the *face* of the indictment to be an *indictable offence*.”

*Per Cur. unanimously.*

RULE MADE ABSOLUTE,  
to quash this indictment.

So that this point seems now to be fully settled.

( C )

1 Tuck. Black. p. 108-9.

“Such colonists carry with them only so much of the English law, as is applicable to their own situation and the condition of an infant colony; such, for instance, as the general rules of inheritance, and of protection from personal injuries....The artificial refinements and distinctions incident to the property of a great and commercial people, the laws of police and revenue, (such especially as are enforced by penalties) the mode of maintenance for the established clergy, the jurisdiction of the spiritual court, and a multitude of other provisions, are neither necessary nor convenient for them, and therefore are not in force. What shall be admitted and what rejected, at what times, and under what restrictions, must,

on case of dispute, be decided in the first instance by their own provincial judicature, subject to the revision and controul of the king in council: the whole of their constitution being also liable to be new-modelled and reformed by the general superintending power of the legislature in the mother country."

Tuck. Black. Ap. p. 405-6.

And here we may premise, that by the rejection of the sovereignty of the crown of England, not only all the laws of that country by which the dependence of the colonies was secured, but the whole *lex prerogativa* (or *Jura Coronæ* before mentioned) so far as respected the person of the sovereign and his prerogatives as an individual, was utterly abolished: and, that so far as respected the kingly office, and government, it was either modified, abridged, or annulled, according to the several constitutions and laws of the states, respectively: consequently, that every rule of the common law, and every statute of England, founded on the nature of regal government, in derogation of the natural and unalienable rights of mankind; or, inconsistent with the nature and principles of democratic governments, were absolutely abrogated, repealed, and annulled, by the establishment of such a form of government in the states, respectively. This is a natural and necessary consequence of the revolution, and the correspondent changes in the nature of the governments, unless we could suppose that the laws of England, like those of the Almighty Ruler of the universe, carry with them an intrinsic moral obligation upon all mankind. A supposition too gross and absurd to require refutation.

In like manner, all other parts of the common law and statutes of England, which, from their inapplicability, had not been brought into use and practice during the existence of the colonial governments, must, from the period of their dissolution, be regarded not only as obsolete, but as incapable of revival, except by constitutional, or legislative authority. For they no longer possessed even a potential existence, (as being the laws of the British nation, and as such, extending, in the theoretical strictness, to the remotest part of the empire,) because

the connection, upon which this theoretical conclusion might have been founded, was entirely at an end: and having never obtained any authority from usage, and custom, they were destitute of every foundation upon which any supposed obligation could be built.... This is a regular consequence of that undisputed right which every free state possesses, of being governed by its own laws.... And as all laws are either written; or acquire their force and obligation by long usage and custom, which imply a tacit consent; it follows, that where these evidences are wanting, there can be no obligation in any supposed law.

( D )

Shaws Jus. p. 226.

If any butchers, brewers, bakers, poulterers, cooks, coster-monger or fruiterers, shall conspire, covenant, promise, or make any oath, that they shall not sell their victuals, but at certain prices, or if any artificer, workmen, or labourers, do conspire, covenant, or promise together, or make, any oaths, that they shall not make or do their work, but at a certain price or rate; or shall not enterprise, or take upon them to finish what another hath begun, or shall do but a certain work in a day, or shall not work but at certain houses and times; every such person so conspiring &c. shall forfeit for the first offence 10*l*. and if he pay not the same, within six days, shall suffer twenty days imprisonment and for the second offence shall forfeit 20*l*. &c. and for the third 40*l*. &c. and if any such conspiracy covenant or promise to be made by any society, brother-hood, or company, of any craft, mystery or occupation of the victuallers above mentioned, with the presence or consent of the more-part of them, that then immediately upon such act of conspiracy &c. over and besides the particular punishment before appointed, their corporation shall be dissolved; and that the said offences shall be determined at the assizes of the peace, or court-leet.

By 25, Hen. 8, c. 2. it is enacted " that to remedy the frequent rise of the price of cheese, butter, capons hens chickens, and other necessary victuals for man's sustenance by ingrossing and regrating the same; the Lord Chancellor and other high officers of the state &c.



may upon complaint of any enhancing of the prices of such victuals without ground or reasonable cause, in any part of the king's, dominions, set and tax reasonable prices of such victuals.

( E )

Burns Jus. p. 164-5.

The justice of every shire, riding and liberty, or the more part of them being then resiant within the same, and the sheriff, if he conveniently may, and every mayor and other head officer within any city or town corporate, wherein is any justice of the peace, within the limits of the said city or town corporate, and of the said corporation, shall yearly in Easter sessions, or within six weeks next after, assemble, and call unto them such discreet and grave persons as they shall think meet, and having respect to the plenty or scarcity of the time, and other circumstances, shall have authority to limit, rate and appoint the wages as well of such the said articles, handicraftsmen, husbandry, or any other labourer, servant, or workman whose wages in times past have been by any law or statute rated and appointed, as also the wages of all other labourers, artificers, workmen, apprentices of husbandry, which have not been rated, as they shall think meet by their discretions, to be rated, limited or appointed by the year, or by the day, week, month, or otherwise with meat and drink, or without meat and drink, and what wages every workman, or labourer shall take by the great, for mowing, reaping, or threshing of corn, and grain, or for mowing or making of hay, or for ditching, paving, railing or hedging, by the rod, perch, lugg, yard, pole, rope or foot and for any other kind of reasonable labour or service. 5 El. c. 4, §. 15.

And by the 1 J. c. 6 the justices or the more part of them, resiant in any riding, liberty or division where the sessions are severally kept, shall have power to rate the wages within such division, as if the same were done in the general sessions for the county. §. 5.

And by the said statute of 1. J. c. 6 the said act of 5 El. shall extend to the rating of wages of all labourers, weavers, spinsters, and workmen, or workwomen, what-

soever either working by the day, week, month, year, or taking any work by the great or otherwise. §. 3.

If any person upon the proclamation published shall directly or indirectly, retain or keep any servant, workman, or labourer, or shall give any more, or greater wages, or other commodity, than shall be so appointed in the said proclamation; he shall on conviction before any of the justices, or other head officers above mentioned, be imprisoned for ten days, without bail, and shall forfeit 5*l.* half to the king, and half to him that shall sue before the said justices in their sessions. 4 El. c. 4, § 18.

But yet masters may reward a well deserving servant, over and above his wages, according as he shall deserve, so it be not by way of promise or agreement, upon his retainer. Dolt. c. 58.

And every person that shall be so retained, and take wages contrary to the said statute of the 5 El. or to the said proclamation, and shall be thereof convicted before the justices aforesaid, or any two of these or before the mayor or other head officers aforesaid, shall be imprisoned for twenty one days, without bail. 5 El. c. 4, § 19.

And every retainer, promise, gift, or payment of wages or other thing contrary to the said act, and every writing and bond to be made for that purpose, shall be void. § 20.

( F )

4 Christ. Black. p. 137. *In Note.*

Every confederacy to injure individuals, or to do acts which are unlawful, or prejudicial to the community, is a conspiracy, journeymen who refuse to work, in consequence of a combination, till their wages are raised, may be indicted for a conspiracy. 1 *Leach Hawk.* 348. One person alone cannot be guilty of a conspiracy; but one person may be prosecuted for having conspired with others, and may be tried and convicted alone. 1 *Str.* 193. In a prosecution for a conspiracy, the actual fact of conspiring need not be proved, but it may be inferred from circumstances, and the concurring conduct of the defendants. 1 *Bl. Rep.* 392. A conspiracy has been said to be comprehended under the denomination of

*crimen falsi*, and a person convicted of it is held to be rendered an incompetent witness. *Leach*. 349. But will this principle apply to confederacies, the designs of which are not to injure by fraud or falshood, but by open violence?

Leach's Crown cases, p. 382.

### Priddle's Case.

William Priddle, Robert Holloway, and Stephen Stephens, were convicted at the Old Bailey, in April Session 1787 of conspiracy; and sentenced to pay a fine of 6s. 8d. each, and to be imprisoned in his majesty's jail of Newgate, viz. William Priddle, for the term of two years, and Robert Holloway and Stephen Stephens for the term of eighteen months.

During the course of their confinement, George Crossley, against whom they had been convicted of conspiring, was indicted at Hick's Hall for wilful and corrupt perjury; and the indictment being removed into the Court of King's Bench, came on to be tried before Mr. Justice Buller, at the sittings, at Westminster after Trinity term 1787.

At the trial, William Priddle was produced as a witness on the part of the prosecution; and being examined on the *voir dire*, he acknowledged that he had been convicted of the conspiracy above-mentioned, and was then brought up under a *Habeas Corpus* from his confinement for that offence.

The defendant's counsel objected to his being examined, and submitted to the court, that a conviction of conspiracy rendered the party infamous, and destroyed his competency as a witness.

Mr. Justice Buller. Conspiracy is a crime of a blacker dye than barratry, and the testimony of a person convicted of barratry has been rejected. It is now settled, that it is the infamy of the crime which destroys the competency, and not the nature or mode of punishment. A conviction therefore of any offence which is comprehended under the denomination of *crimen falsi*, destroys the competency of the person convicted, as perjury, forgery by the common law, &c.

The testimony of the witness was rejected.



## ( G )

## Case of Macklin the player, 2 M'Nally, 634.

So if several persons meet at a particular place, from different motives, and being met, all act together to one common end, such acting together makes all the parties conspirators.

As in the king (at the prosecution of *Charles Macklin*) *v. LEE*, and others, *B. R. England*, 1774.

Macklin was an eminent player, and several attempts were made to drive him from the stage. The court of king's bench granted an information against the defendants for *conspiring* to ruin him in his profession, &c. *Vide* the inform. *Doug. Cr. Cir. Assist.* 160.

On the trial, the defendants counsel insisted, that the prosecutor, in support of a conspiracy, should give evidence to shew, that there was a *previous* meeting of the parties accused, for the *purpose* of *confederating* to carry their purpose into execution.

Lord Mansfield over-ruled the objection. Conspiracy, he said, was derived from the verb *conspiro*, a breathing together; and therefore if a number of persons met together for *different* purposes, and afterwards joined to execute one common purpose, to the injury of the person, property, profession, or character of a third person, that was conspiracy, and it was not necessary to prove any previous consult or plan among the defendants against the party intended to be injured. *MS.*

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