

terials. I pay my journeymen regularly, let him 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.⁴⁴

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.

[64] MR. HOPKINSON. . . 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

⁴⁴ The counsel for the prosecution, offered Mr. Ryan to rebut this testimony, as slander: but the court over-ruled it as unnecessary.

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.

[65] 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 or-

ganized 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 [66] 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 contradic-

tion, 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 gi[s]t 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 [67] 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, increasing, 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 Baltimore? [68] 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 partic-

ular 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 factories; 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 increases 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, [69] when wood and every necessary of life was unusually cheap. . . . I can see no pretext for the attempt, but the increasing 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 Garrison 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.

[70] 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 Garrison'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 [from] 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 Garrison 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 Garrison 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! . . .

I will now proceed to shew you what the law is, and you will receive from the court more information on the [71] 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 forman 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 [72] have been the personal acts of the defendants; but in cases of combinations and conspiracies, each must answer for the whole: the act of one is the act of each, and to this point is 2 M'Nally, p. 611. 'The existance 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 . . .

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 [73] can better afford to work here at their old wages, than at the higher rates given in our neighbouring cities. [Closing statement omitted.]

MR. FRANKLIN. [Opening statement omitted.] 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.]

[74] 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 allega-

tion. 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 intend-
ment 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 [75] 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 clear-
est testimony . . . much more so in a criminal case.
In the present instance, none has been proven or at-
tempted 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 jour-
neymen? This would be too arbitrary a power for any man to contend for; it would be an insult to your under-
standings, to insist upon it. The real value of lab-
our, in a country, must depend upon a variety of cir-

cumstances, 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 [76] testimony of the journeymen, but two of the masters. . .

(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 transations 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 [77] 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.*⁴⁵ 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

⁴⁵ See Appendix A.

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 [78] 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 adop-

tion 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. [79] 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 expatiat-

ing 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 [80] 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. [Transition statement omitted.]

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. I. 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 is to him; but the necessity is not so immediate. We rarely hear, it has been said, of the combinations of masters; though frequently of those of workmen. [81] But whoever im-

agines, 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.

[82] 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 109.⁴⁶

(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,

⁴⁶ See Appendix B.

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, [83] 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 [84] 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 endeavours to extinguish the fire which burns his neighbour'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, independent [85] 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 dependence 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. [86] [Remarks of the Recorder on the doctrine of deodand omitted.] By an act of assembly, passed since our revolution, (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 406.⁴⁷ 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

⁴⁷ See Appendix C.

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 constitution." [87] 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, [88] 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 barbarous 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 [89] 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. 226,⁴⁸ shew what severe provisions are made against combinations among the 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 165.⁴⁹ 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.

⁴⁸ See Appendix D.

⁴⁹ Ditto (See Appendix) E.

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.

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 [90] 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 complexion 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 prosecutors, [91] not content with building costly mansions, rap-

idly 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 lanthern 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 of 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 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 [92] 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. Bedford'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 [93] 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 of 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."

[94] 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 re-admit Garrison 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 en-

deavours to be serious. The fable of Mr. Bedford and his losses may be a very [95] 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 lose 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

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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 [96] 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 de-

scription 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 [97] 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 precedence 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 respector 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.”

[98] 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 tiger, 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 pre-possession, 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 defend-

ants 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.

[99] 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 [100] at the suit of the king, and were, by the ancient common law, to receive the villainous judgment." And well it might be called villainous! 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 anybody 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 [101] 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 reailly 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; [102] 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 flimsey 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 gentleman 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 [103] 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 [104] 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 agreed 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 afterwards [105] 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 separately 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 [106]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 [107] 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 paid us one or two hundred dollars each, (not an uncommon case.) This is a combination precisely similar to that of the journeymen 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 loses 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 misspent, 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 admirer [108] 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.

[General remarks omitted.]

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

[Digression omitted.]

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 lose 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 [110] Coke) “That this villainous 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 villainous 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 [111] 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. 382,⁵⁰ and referred to Case in Cowp. p. 258. This, if not a villainous, 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 masse*, at any subsequent period.

⁵⁰ See Appendix F.

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 taylors, 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, [112] 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 encroach-

ments 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.

[113] 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, agreeable 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 recognized 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. II.

(Here Mr. Rodney read the whole case, and proceeded to comment on it.)

[114] This, it appears, was an indictment for a conspiracy by the defendants to raise their wages as journeymen taylors. 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*; [115] 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, et 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 taylors 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*."

[116] (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." Gross 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 taylors 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 manufacturers 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.

[117] 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 prejudice 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, sure-

ly 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. [118] 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 reasonably [119] 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 journeymen's 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 [120] 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 [121] 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! . .

[Digression omitted.]

In this last contest between the journeymen and the masters, the weaker power against the stronger, (for whilst the masters may lose 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 [122] 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 apprehend 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 [123] 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!

[124] 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 lose, 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, althought 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 Croesus, or as poor as Belisarius . . . whether their complections 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 encrease 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.

[125] 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, [126] and his 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 Lancaster⁵¹. . . . 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 vil-

⁵¹ There was formerly the State arms, surmounted with the emblem of justice, over the judges' seat, now fixed in the representative chamber at Lancaster.

lanous 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 inforced 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 community; [127] 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 . . . 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.

[128] 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 Bal-

timore. 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 [129] 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 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 labourers are numerous and the work not sufficiently ample for all. But in a country where labourers 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 [130] 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 imprescriptible 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.

[Digression omitted.]

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?

[131] 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 opposite 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 aluena 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 journeyman will be ruined; the former can best stand the shock, and Mr. Franklin has read Smith's *Wealth of Nations* to prove it.

[132] 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 un-

just. 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 £1 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. [133] 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 doubt 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.

[134] 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 [135] 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 the 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 fulfill.

They say, no force was employed – Force, yes, they

threw a potato 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, George Pullis, John Harket, John Hepburn, Dubois, Undrel Barnes, and Keimer. The [136] 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, [137] 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 vs. 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, brick-layers, 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'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.⁵²

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

⁵² See this case in Appendix G.

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.

[138] 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 birthright and noblest of inheritance. Caesar 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 punishable [139] 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 bottomed 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.

[Final appeal omitted.]

[140] 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 loose 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 [141] 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 sit 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 [142] 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 tippling 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. . .

[143] 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 means 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 [144] 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 con-

tinue 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 [145] 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 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 [146] 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 mem-

bers 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 of-

fence, 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.

[147] 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 [148] 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 *ignis fatius*, 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.

[149] [Digression omitted.]

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 fixed, 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 clerk's 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.