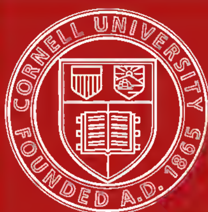

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PENNSYLVANIA

COLONIAL CASES:

The administration of Law in Pennsylvania prior to
A. D. 1700 as shown in the cases decided
and in the Court proceedings.

By

HON. SAMUEL W. PENNYPACKER, LL. D.

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PREFACE.

This volume is the outgrowth of an address made to the Law Academy of Philadelphia. Having been requested to deliver in 1891 the annual address before that reputable and useful institution, it occurred to the writer that some six or eight cases decided soon after the settlement, with which he was familiar, might perhaps furnish facts of interest if not of importance in the history of our jurisprudence. The subject broadened as he studied it, and he concluded to make a complete Report, so far as circumstances would permit, for the period intervening between the time of Penn's colonization of the province and the year 1700. It is hoped other Pennsylvanians may participate in the gratification he has experienced in an examination of the work of our earliest courts.

July 20, 1892.

Si le despotisme, la superstition, ou la guerre viennent replonger l'Europe dans la barbarie d'ou les arts et la philosophie l'ont tirée, ces flambeaux de l'esprit humain iront eclairer le nouveau monde et la lumiere apparôitra d'abord á Philadelphie.—M. L'ABBE RAYNAL.

It is not to the fertility of our soil and the commodiousness of our rivers that we ought chiefly to attribute the great progress this province has made within so small a compass of years, in improvements, wealth, trade and navigation, and the extraordinary increase of people who have been drawn here from almost every country in Europe, a progress which much more ancient settlements on the main of America cannot at present boast of. No: it is principally and almost wholly owing to the excellency of our constitution, under which we enjoy a greater share both of civil and religious liberty than any of our neighbors.

Address of ANDREW HAMILTON to the Pennsylvania Assembly, 1738.

But I firmly believe that it is not simply to those physical advantages that Pennsylvania owes her prosperity. It is to the manners of the inhabitants; it is to the universal tolerance which reigned there from the beginning.

J. P. BRISSOT DE WARVILLE.

The Pennsylvanians . . are by far the most enterprising people on the continent.

Travels of REV. ANDREW BURNABY, A. M., 1760.

Je vous dirai, sans me repeter, que J'aime les Quakers. Oui, si la mer ne me fesait pas un mal insupportable, ce serait dans ton sein, O Pennsylvanie! que J'irais finir le reste de ma carriere.—VOLTAIRE.

Love the Quakers.—CHARLES LAMB.

He (Penn) founded in those distant regions a republic, whose form, laws and institutions resembled no other known system of government, whose pacific principles and commercial spirit have long blessed it with tranquillity and opulence.

DR. MOSHEIM.

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GENTLEMEN OF THE LAW ACADEMY:

Mr. Thomas I. Wharton, in his preface to the third edition of Dallas' Pennsylvania Reports, says: "The Reports contained in the following pages furnish some of the earliest specimens of our American Jurisprudence and, with the exception of a small volume published in Connecticut, were the first of the series of printed decisions in this country." An examination of the first volume of Dallas shows that the earliest case there reported is anonymous and was determined in September Term, 1754, and that a period of five years elapses before the report of the next case in April Term, 1759. If, therefore, we were compelled to depend upon the professional reporter for our information the legal annals of Pennsylvania for a period of seventy-two years, from the time of the settlement of the province in 1682 until 1754, would be an absolutely barren field and knowledge of the manner in which, during that time, causes were determined, principles were elucidated by the arguments of counsel and the opinions of judges, and justice was administered, would be utterly lost. The archæologist disdains the printed page of the historian and by breaking into the floors of caves, opening up long forgotten graves, and gathering here and there the chips which the ancient workmen cast away, shows us with entire certainty much of the life and many of

the movements of the human race for ages before any member of it was able to write. By pursuing somewhat similar methods it is entirely possible for one who has given some of his leisure to the gathering of neglected manuscripts and ephemeral books to gain information concerning early jurisprudence of very considerable value and interest which as a lawyer he could never have secured. It is the purpose of this paper to endeavor to furnish reports of cases heard and determined in Pennsylvania prior to the year 1700. It must be remembered that being constructed from the notes of unprofessional writers, sometimes from the comments of disappointed suitors and fragmentary statements, and from MS. dockets, not technically accurate, they are necessarily crude and imperfect, but still it is hoped that, showing as they do the very beginning of the development of legal principles in Pennsylvania, they will prove to be not without attraction for the intelligent members of the Law Academy earnest in the pursuit of knowledge and taking a pride in the history of the profession upon the active duties of which they are about to embark.

PENNSYLVANIA COLONIAL CASES.

The first case to which I shall call your attention is that of

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NOBLE vs. MAN. [1]

[20th, 4th mo., 1683.]

This case came up upon appeal from the county court of Philadelphia County before the Provincial Council on the 20th of 4th month, 1683. Under the Frame of Government the Provincial Council, consisting of eighteen persons, "men of most note for their virtue, wisdom and ability," were charged with the duty of seeing that "all laws, statutes and ordinances which shall at any time be made within the said province, be duly and diligently executed," and they appear to have taken jurisdiction of causes both originally and upon appeal. The action, doubtless ejectment, was brought to test the title to lands lying in the county of Bucks. The county court of Philadelphia gave judgment in favor of Man. The Council, in announcing their decision, say "ye law saith that all Causes shall be first Tryed where they arise. It is the Opinion of this Board that ye apeal Lyes not Legally nor regularly before us, and therefore doe refer ye Business to the proper County

[1] Colonial Records, Vol. I, p. 76.

Court and doe fine ye County Court of Philadelphia forty pounds for giving ye said Judgment against Law."

In effect the appeal was quashed, and the judgment improperly entered was disposed of by referring "the business" to the court having jurisdiction. With respect to the remaining part of the decision it is only necessary to add that the race of judges who held that a fine should be imposed upon the court for giving judgment against the law soon perished, no successors arose who accepted this view, and the principle failed to become established as a part of our jurisprudence. Had it been otherwise, when vacancies occur upon the Bench, there would be fewer lawyers, I ween, willing to fill them.

BELLAMY vs. WATSON.[1]

[4th, 5th mo., 1683.]

This case came before the Council upon an appeal from the judgment of the court of Sussex County, at that time a part of Pennsylvania, and was also probably an action of ejectment. The defendant claimed under a grant from one Cantwell. The plaintiff denied the authority of Cantwell to make the grant and alleged that "The Govr. of York Tore the Defendt's Pattent for its being so much as three thousand acres." The council offered to give the defendant

[1] Colonial Records, Vol. I, p. 77.

time to produce a patent or certificate of patent but the offer was declined. Thereupon judgment was entered for the plaintiff "wth forty shillings Damages and Costs of Suite for that it doth not apear that Capt. Henry Smith under whom the Defendt. Claimes hath any Claime in Law or Equity for any land upon Prime Hooke." It was further ordered that "ye Plant. shall pay to the Defendt. for his Improvements he hath made what shall be adjudged the true vallue thereof by three Comissrs of Valluation appointed by this board" and that the defendant "have four months time from ye date hereof to take away his Cropp and Stock and other Moveable Concernes."

MARCH et al vs. KILNER.[1]

[7th, 7th mo., 1683.]

This was apparently a proceeding before the Council sitting as a Court of Admiralty against the defendant, master of a vessel called the "Levee of Liverpool," and was commenced by petition setting up various causes of complaint on the part of certain passengers, arising while the vessel was at sea. March alleged in his petition that the defendant "Trode upon him on board the Ship" whereupon he said "Dam it, cannot the man see" and that then "ye Mr. beat him and made his mouth bleed."

The answer of the defendant was a substantial ad-

[1] Colonial Records, Vol. I, p. 79.

mission. It set out that "he being in a Storme trode on him by chance, and ye other Daming him and calling him foole Caused him to Cuff him."

John Fox complained that the Master "bid him cleane the Deck. He ansered that it was cleane already. Whereupon ye Master beat him." The answer to this complaint was also an admission, and was to the effect that "One night he spake to John Fox to cleane ye deck, who said he would not, and also gave him the Lie whereupon ye Master Struck him."

The allegations of Edward Jones were more serious. He said "He drew some Water, and afterwards the Mr. seeing ye hhd of water open fell upon ye sd Jones and beat him with a staff and made his nose bleed, and afterwards drew him by ye hair of the head to the Main mast, kickt him on the side, and run his fingers up his nose."

Nicholas Newton testified: "There was a Caske wch wanted a pegg That was almost out, and ye Master spake to Edw. Jones to put a pegg into it, which he did, but still it runn out, whereupon the Mr. struck him several blows."

The defendant answered "yt he asked ye said Jones why he lett ye water run at wast, who said he did not let it run at wast and gave him ye like and other ill words, whereupon ye Mr. struck him."

What was contained in the complaint of Philip England can only be inferred from the answer and the testimony. Whatever it was the defendant denied

all of the allegations except "only ye kicking of the maid, and that was for Spilling a Chamber Pott upon ye Deck; otherways he was very kind to them."

On behalf of the complainant, George Green testified that England went to the defendant for the overplus water and the beer which was his own, but that it was denied to him. Thomas Brinket testified that while the master told them to take care of the water, there being but little left, he never at any time denied them water and that "ye ship rouled sometimes when ye cask was almost out and soe made it like a pudle," and that "ye Seamen drunk more of ye Passengers beer than they themselves and changed 5 Barrells of ye Passengers beere and then they had not performed halfe their Voige, and the Ship's beer being spent, drank wholy of the Passingers" and that "ye Seamen drunk sometimes one Cann, sometimes two a day, more than Ye Passengers that owned the drinke."

After hearing this testimony and considering the papers, the Governor and Council "gave the Master a reprimand and advised him to go with the Passingers and make up the business wch accordingly he did."

The facts developed in this case are interesting because they indicate the extent of authority permitted to the masters of vessels at that time even over the passengers, and the perils, other than those from the winds and the waves, that beset them that went down to the sea in ships. The treatment of the passengers could not have been much worse than was customary,

or the master would probably not have escaped with a simple reprimand. Those of you who contemplate a forthcoming trip from Philadelphia to Liverpool may congratulate yourselves that there is no danger now that the master will run his fingers up your noses or that you will be called upon to clean the deck and no necessity, if you have a cask of beer along, as I hope you will not, of taking in addition two for the sailors.

THE PROPRIETOR vs. CHARLES PICKERING et al.[1]

Fortunately we have a record of the proceedings in this prosecution from their commencement. At the meeting of the Council on the 24th of 8th month, 1683, Penn, the Governor, informed the board that it would be well to issue a warrant for the apprehension of some persons suspected of putting away bad money. Robert Felton, being called and sworn, said that he had received twenty-four pounds of "bard silver" to coin; that he made the seals and Pickering and Samuel Buckley helped him to make the "bitts;" that how much the alloy was he did not exactly know: and that he having some scruples about it his employers promised to protect him in what he did for them. A warrant was thereupon issued and Pickering and Buckley appeared before the board. The Governor told them of their abuse to the government by "Quining of Spanish Bitts and Boston money" and asked

[1] Colonial Records, Vol. I, p. 85.

them whether or not they were guilty. They admitted putting out some of the "new bitts" but said that "all their money was as good Silver as any Spanish money" and Pickering added that he heard "Jno. Rush swere that he Spent halfe his time in making of bitts."

Buckley, upon being further questioned, acknowledged that he was present at the stamping and struck the hammer and that there was brass or copper put into the silver when melted, and more of it than constituted an ordinary alloy. Pickering and Buckley entered security in five hundred pounds for their appearance and Felton was given into the custody of the sheriff. The board directed that a warrant be issued to the sheriff to summon a grand and petit jury, an indictment be drawn, that John White be made Attorney General to plead the cause for the Proprietor, and that a proclamation be sent out forthwith against "New Bitts and New England Shillings" in order "to cry them downe." On the 26th the grand jury returned a true bill against Pickering for having committed "a Heynous and Grevious Crime." The indictment was read to the defendant who pleaded "Not Guilty and would be tryed by his Country." The Attorney General after an opening address to the jury called several witnesses, who testified to receiving and borrowing new bitts, as they were called, from the defendant. The foreman of the jury asked the defendant to tell where he got the money he had paid to sev-

eral people but, instead of answering the question directly, he said that "the money any pson rec'd of him he would change it, and that noe man should Loose anything by him." After a charge from the Governor the jury found a verdict of "guilty." Buckley and Fenton confessed the facts and were also convicted. The Governor then pronounced sentence as follows:

"Charles Pickering: The Court hath Sentenced thee for this high misdemeanor whereof thou hast been found guilty by the Country that thou make full Satisfaction in good and Currant pay to Every Person that shall, within ye Space of one month, bring in any of this false Base and Counterfitt Coyne, according to their respective proportions, and that the money brought in shall be melted into gross before returned to thee, and that thou shalt pay a fine of fourty pounds into this court towards ye building of a Court house in this Towne, and Stand Committed till payd, and afterwards find Security for thy good abearance.

Samuel Buckley: The Court, Considering thee to have ben more Engenious than he that went before thee, hath thought fitt to fine thee and doe fine thee tenn pounds towards a Public Court house here, and to find good Security for thy good abearance.

Robert ffenton: The Court having also Considered thy Ingenuity in Confessing the Truth of Matters, and that thou art a Servant, hath only Sentenced thee to Sitt an hour in the Stocks tomorrow morning."

A few days later the sheriff was ordered to go to Pickering and "receive as much good money, or Vallue thereof, as he hath received of ye people in bad money, and pay ye same respectively to ye people as he received the other from them."

The offence of Pickering and his associates appears to have been an unauthorized attempt on his part to supply the colony with a medium of exchange of an intrinsic value at least equal to that of the Spanish coin and the New England shillings. He was a lawyer whose name has ever since been borne by a branch of the Schuylkill river and by one of the townships of Chester County, and it is plain that his technical conviction was visited with no social condemnation. He afterwards tried a number of cases in the courts, and in 1685 the Council formally declared that he stood "in equal capacity with other persons of his station in this Province."

PROPRIETOR vs. MATTSON.[1]

[27th, 12th mo., 1683.]

At the meeting of the Council 7th of 12th month 1683 Margaret Mattson was examined and about to be proved a witch, whereupon it was ordered that her husband Neels Mattson should enter into a recognizance in the sum of fifty pounds for her appearance for trial two weeks later. On the 27th be-

[1] Colonial Records, Vol. I, p. 95.

fore William Penn and the Council, the grand jury having found a true bill, her indictment was read and she pleaded "Not guilty." Lasse Cock and James Claypoole were attested as interpreters, the defendant being a Swede, and a jury having been impanelled the trial proceeded. It is perhaps needless to say to you that upon that day, when a belief in witchcraft was almost universal and witches were being put to death among all civilized nations, it was Pennsylvania and her institutions, and not the poor old woman in the dock, which were upon trial.

Henry Drystreet testified: "He was tould 20 years agoe that the prisoner at the Barr was a Witch & that severall Cows were bewitcht by her. Also that James Saunderling's mother tould him that she bewitcht her cow, but afterwards she said it was a mistake, and that her Cow would do well againe, for it was not her Cow but another Person's that should dye."

Charles Ashcom testified: "Anthony's Wife being asked why she sould her cattle (she said it) was because her mother had Bewitcht them, having taken the Witchcraft off Hendrick's Cattle and put it on their Oxen; She myght Keep but noe other Cattle. And also that one night the Daughter of ye Prisoner called him up hastily and when he came, she sayd there was a great light but just before, and an Old woman with a knife in her hand at ye Bed's feet;

and therefore shee cryed out and desired Jno. Symcock to take away his Calves or else she would send them to Hell."

Anneke Coolin testified: "Her husband tooke the heart of a Calfe that Dyed, as they thought, by Witchcraft, and Boyled it, whereupon the Prisoner at ye Barr came in and asked them what they were doing. They said, boyling of flesh. She said they had better they had Boyld the Bones, with severall other unseemly Expressions."

Affidavits of John Vanculin and Thomas Balding were also read.

The defendant appears to have been examined in her own behalf. She said that she "vallues not Drystreet's Evidence but if Sanderlin's mother had come she would have answered her;" she denied "Charles Ashcom's Attestation at her Soul and Saith where is my Daughter, let her come and say so;" and also denied "Anneke Cooling's attestation concerning the Gees—saying she was never out of her Canoo and also that she never said any such things Concerning the Calves heart."

Penn then charged the jury, but unfortunately there is nothing to indicate the character of the instruction he gave them. They went forth and upon their return "Brought her in Guilty of haveing the Comon fame of a witch, but not guilty in manner and forme as Shee stands Indicted."

Thus ended the first and last trial for witchcraf

within the limits of Pennsylvania, that happy Commonwealth wherein the administration of justice is unstained by the corruptions of the present and was unaffected by superstition and prejudice amid the fanaticisms of the past. The names of the jurymen were John Hastings, foreman, Robert Wade, William Hewes, John Gibbons, Albertus Hendrickson, Nathaniel Evans, Jeremiah Collet, Walter Martin, Robert Piles, Edward Darter, John Kinsman and Edward Bezac.

Gentlemen of the Law Academy, future lawyers and judges in the Courts of Pennsylvania, pause for a moment and in an humble spirit offer your tribute of respect to the memories of William Penn and those worthy jurymen. Cherish the hope that you may be able, amid the duties and responsibilities with which you will soon be confronted, to do somewhat to maintain the reputation of the profession in your native state at the height, established in the earliest days of the province, so far beyond that of less enlightened and less fortunate communities.

JOHNSON vs. PETERSON.[1]

The record of this case, which came on for a hearing on the 13th of 3d month, 1684, is as follows:

"There being a diference depending between them, the Govr. and Councill advised them to shake hands

[1] Colonial Records, Vol. I, p. 106

and to forgive One another; and Ordered that they should Enter in bonds for fifty pounds apiece for their good abearance; wch accordingly they did. It was also Ordered that the Records of Court Concerning that Business should be burnt."

THE PROPRIETOR vs. MOORE.[1]

[15th, 3d. mo., 1685.]

The earliest attempt to impeach an official in Pennsylvania has a peculiar interest, though like many later efforts of the same kind it led to no result, because the person accused was Nicholas Moore the first Chief Justice, or Prior Judge as he was then called, of the Province. An examination of contemporary records makes it I think quite clear that the accusation was the outcome of the dawning politics of the time and was one of those events marking a divergence of interest between the proprietor, aided by the Council and appointed officers, and the popular party represented by the Assembly. Moore, a purchaser of much land in the province and president of the Society of Free Traders, came with Penn to Pennsylvania in 1682. He was elected a member of the Assembly in 1682, in 1684 when he was chosen speaker, and again in 1685.[2] Having been appointed Chief Justice in 1684, and having received his commission in August of that year, he at once entered up-

[1] Colonial Records, Vol. I, p. 135. [2] Votes of Assembly, Vol. I.

on the performance of his duties. In the first Assembly of 1682, Moore was selected as Chairman of the Committee upon Privileges and Elections, and among the matters coming before them for determination was a claim made by Abraham Man of Newcastle County to a seat in the House. The Committee reported "that Abraham Man and his Party had made some illegal Procedure the Day of Election at Newcastle that he might be elected a Member of this House; several Witnesses having been heard and examined on both sides, the Committee adjudged John Moll to be duly elected." A vote having been taken the report of the committee was sustained. Man was more fortunate a few years later and his name appears among the members of the Assembly for the first time in 1684. Though Moore was selected as Chairman of the Committee of the whole House on the 11th of the 3d month, 1685, he doubtless soon found himself in the minority and he entered his protest on the minutes against several laws which were passed, one of them being an act "Relating to the trial of Causes by the Justices of each respective county without the charge of Provincial Judges." On the 15th of 3d month "A Complaint was exhibited by a member of the House against Nicholas Moore," charging him with "several high Crimes and Misdemeanors" and after he had been requested to withdraw the articles were voted upon separately and it was determined that he should be impeached. The member who exhibited the com-

plaint was presumably Man and his name appears following that of the speaker on the committee appointed to prosecute the impeachment before the Council. The committee appeared before the Council the same day and presented the articles of impeachment: which were in brief:

1. That he, Moore, "hath presumed of his owne authority to Send Unlawfull Writts to the Sherifs and to ascertain and appoint the Time of ye Provll Cirquits without the direction & Concurrence of ye Provl Councill * * * and thereby being Impossible to give due Sumons according to Law Either of Jurys Wittnesses or Persons Concerned &c."

2. That "the said Judge Sitting in Judgment at New Castle hath presumed to cast out a person from being a Jury after ye said Person was lawfully attested to ye True Tryall of ye cause."

3. That he "sitting in Judgment did in ye towne of New Castle refuse a verdict brought in by a Lawfull Jury and by Divers threats & Menaces and Threatening ye Jury with ye crime of Perjury and (confiscation) of their Estates forced ye said Jury to goe out so often until they had brought a Direct Contrary Verdict to the first."

4. That he "did arbitrarily reject and cast out the complaint of John Wooters in New Castle court."

5. That "sitting in Judgment at ye aforesaid Towne of New Castle wherein two persons stood Charged in a Civil action, it being in its own nature only

Trover and Convertion, and ye pretended Indictment raised it no higher, notwithstanding the said More did give the Judgment of fellony, comanding the Defendant to be Publickly Whipt, & Each to be fined to pay three fould."

6. That he "Comanding a Witness to be Examined did by overawing & greatly perverting ye Sence of ye Witnesses Charge and Condamne the said Witness to be guilty of Perjury."

7. That "at ye said Towne of New Castle, Comanding the records of ye former Circular Courts to be produced, wch ye said More reading, he did in the open Court Censure the judgment of ye preceeding Judges by Saying their Judgment was not right."

8. That "sitting at Judgment at Chester did in a most Ambitious Insulting & Arbitrary way reverse and Impeach the Judgmt of ye Justices of ye said County Court, and Publickly afronting the members thereof although the matter came not regularly before the said Circular Court."

9. That being chosen to be judge of the circular court according to law "wch obliges ye said Judges both spring and fall to goe their cirquits and ye said Nich. More assuming to himselfe the Power of appointing the Times * * * hath notwithstanding declined the two lower Cirquits."

10. That he "Declared that neither he nor his Actions are accountable to ye President and Provll Councill."

The Council, after hearing read these formidable charges, most of which set forth offences alleged to have occurred, as is seen, at the town of New Castle, sent a request to Moore asking him to appear on the following morning by the seventh hour.

The Assembly met the next morning at the early hour of six and immediately Man called attention to injurious reflections cast upon him by Moore, who had called him "a person of seditious Spirit." After consideration, it was determined that in so doing Moore had broken the "Order and Privilege" of the House, that he should be sent for to answer, and "that if he do not submit himself as conscious of the said Charge, that then he should be ejected as an unprofitable member." Moore did not appear and to a committee sent to require his appearance he asked "In what capacity?" and was answered that "He might know when he came there." He then said that "He would be voted into the House as he was voted out of the House before he would appear." John Briggs, another member, reported that he had met Moore at the Governor's house and had been asked what the Assembly was doing, to which he replied that they were proceeding with the impeachment, and that Moore then said, "Either I myself or some of you will be hanged." Against the protest of one bold member, John Hill, it was then voted that he should be "cast out of the house."

Meanwhile, Abraham Man and John Blunston, hav-

ing been selected to conduct the prosecution, it became necessary to secure possession of the originals of the proceedings of the last provincial circular courts, and Patrick Robinson, the clerk, was ordered to produce them, but he "actually though not verbally denying the same" it was directed that he should be committed into the custody of the sheriff during the pleasure of the House. It seems that when Robinson was first asked for the records he said "There was no records." He afterward continued: "That his Minutes of the Proceedings of the said Courts were written some in Latin where one word stood for a Sentence and in unintelligible Characters which no Person could read but himself, no, not an angel from Heaven." I want to say in his behalf, at this late day, from a careful scrutiny of some of his manuscript, that this statement was pretty near to the truth. He was informed that he "would be allowed to read them in the Assembly and that the Assembly would put the most favorable Construction upon them they could." The chronicler tells us that he then made several evasions, and withdrawing toward the door said he would consider it; and that upon being told that his delay would be taken as a denial, he replied that they might take it so if they would. He also declared that the Assembly had drawn up an impeachment against Moore "Hob nob at a venture" which was regarded as so high a breach of privilege that they refused to transact

any business until it had been atoned for, and even the Council determined this was "indecent, unallowable and to be disowned." Meeting the Speaker in the street he said to him in a threatening manner, "Well, John, have a care what you do, I'll have at you when you are out of the chair." He was voted "a Publick Enemy to the Province" and a "Violator of the privileges of the Freemen," but when brought before the Assembly by the sheriff upon a warrant and the records were demanded "he lying all along upon the Ground refused to make answer."

For some reason there was no hearing of the articles of impeachment at the early hour in the morning which had been fixed, but at four o'clock in the afternoon of the 18th the Speaker and the Assembly came before the Council with their witnesses.

Moore, feeling perhaps strong in the justice of his cause or in the friendly disposition of the tribunal, seems to have treated the matter lightly and was again absent. In support of the allegation that he issued writs unlawfully, evidence was produced to show that in one instance jurors were summoned six days and in another only five days before the holding of the court. With reference to the second accusation that he had withdrawn a juror after the latter had been sworn, John Cann, one of the Council, came forward to declare that at the trial "Upon ye Objections of ye Defendants ye Court Yielded that before the said James

Reads was attested he should be layd by but notwithstanding through some Omission, after he was attested he was layd by."

The third accusation originated in facts occurring upon the trial of a case brought by Abraham Man, whom perhaps it would not be unfair to call the opponent of Moore, against Edward Cantwell.

It is a little difficult to perceive exactly what was the thought of the Judge from the meagre statement which has been preserved, but at all events the account is interesting as affording a view of a part of the conduct of a cause at that early day. John Cann, the same member of Council, declared that he was in court when the jury came in, that the Judge asked them whether they were all agreed, that he thought they said they were all agreed but he was not certain, "and the Jury being asked what was their Verdict, they said Eight pounds. The Judge asked them what they meant by it. They said they found Eight pounds for the Plaintiff. Judge More urges thereupon, what is eight pounds in Comparison of five hundred pounds alleged in the declaration, and further said to ye Jury, this is noe Verdict. You must goe out and find according to Evidence or Else you are all perjured Persons. Whereupon they went out and brought in their Verdict the next morning for the Defendant with Costs of suit."

The fourth, fifth and seventh accusations seem to have been practically abandoned.

With respect to the sixth, Cann declared "that Judge More Seeming by a threatening word Called John Harrison to be an evidence against Tho. Pringle and Geo. Ambler. He demanded of Harrison to declare what he knew Concerning the Hogg in Question. The said Harrison declared he knew nothing of the taking of ye hogg for he was at Philadelphia at ye same time. Upon severall other Questions asked him whether he had seen or Eat any of it he Declared he had both seen and Eat. Upon that the jury had this in charge, the Judge telling them it was perjury. They accordingly found the Person Guilty of Perjury."

There was also evidence presented to show that he arbitrarily reversed the action of the county court, that he declined to go to the lower counties for the performance of his duties, and that he called the members of the Provincial Council "fooles & Logerheads, and said it were well if all the Laws had Drapt, and that it never would be good Times as Long as ye Quakers had the administration."

The Assembly then asked that he be removed from all places of trust and power. The Council ordered that express notice be given with all dispatch requiring him to appear that afternoon, being the 19th, and then they adjourned until the 28th of the same month. Upon that day nothing was done, but two months later, while the Council were engaged in debating some other matter, Abraham

Man and John Blunstone "Immediately steped in" and Man began thus: "Wee are come in ye name of ye free people to know whether you have not forgott yourselves in not bringing Judge More to a Tryall." When the Secretary asked him for his petition he replied "that they did not look upon themselves obliged to come by way of petition considering whom they represent." Meeting with "some sharp repremands from ye Councill" they withdrew. On the 2d of June he was ordered to cease from acting in "any place of authority or judicature" until the impeachment was tried or satisfaction given to the Council. To a renewed request on behalf of the Assembly, made by John Blunstone and George Maris, the Council answered Sep. 16th. "That Nich. More being at this time under a Week and Languishing Condition and not under promising hopes of a speedy Recovery so that at present they cannot give any certaine or deffinitive answer."

From this time all further attempts to urge the prosecution seem to have ceased, perhaps because of the fact that soon after Abraham Man was no longer a member of the Assembly. Moore, undoubtedly, both before and after this prosecution, retained the confidence of Penn.

HANS PETERSON in BEHALF of ye KING, GOVERNOR, and HIMSELF vs. JOHN HARRISON, THOMAS PRINGLE and GEORGE AMBLER.[1]

[10th, 5th mo., 1685.]

This case, tried before Nicholas Moore and Robert Turner, constituting the Circular Court in New Castle county, was one of those resulting in the impeachment of Moore. The defendants were servants of William Dearing master of the vessel called the Wren, and had been sentenced by the Circular Court to imprisonment for stealing a hog. The master came before the Council and complained that the proceeding was illegal. John White appeared as counsel for Peterson and Charles Pickering as counsel for the servants. After the reading of the record of the Circular Court White objected to it as to "ye manner of ye indictment and ye judgments upon them," but without determining the questions raised the Council asked whether Peterson would be contented to receive "ye reall value of one hogg—viz twenty and three shillings." The answer was affirmative. The Council then remitted the sentence of imprisonment and ordered a full hearing. Dearing gave bond in the sum of twenty pounds for the appearance of Harrison and Pringle at a day fixed, the sheriff of New Castle was directed to give Ambler into the custody of Dearing, and Peterson was summoned to appear "upon ye penalty of forfeiture of one hundred pounds upon failure." Upon the day fixed for the hearing a scene occurred which

[1] Colonial Records, Vol. I, p. 145.

forcibly suggests the preliminaries to many a modern trial. White when called said "that they were no defents for yt they were well satisfied with ye Judgment the Court had given against them" and that if he was to proceed "he was not prepared with his Evidences not knowing that it would be tryed over againe."

Peterson in his own behalf said "that notwithstanding he endeavored to bring his Witnesses but they refused to come and he knew not how to force them being ignorant of ye way, since a Justices Summons was not a Sufficient Warrt for appearance before ye Councill." There was some inconsistency between these two statements, but perhaps not more than has sometimes happened in recent trials. Pickering then arose and alleged "yt ye Servants were Trappand by Hans Peterson who some dayes before ye court bidd them not to appear there, promising them not to appear to prosecute them, by wch deceit they were unprovided for a defense." This statement being denied, a witness was called by Pickering who testified "yt in his hearing Hanse Peterson tould William Dearing that he would clear them and bring them off and yt he need not appeare" but when asked when the interview occurred he "made answer he had forgott."

Pickering then asked to have Dearing sworn. This offer raised a legal question requiring consultation, the Council, instead of retiring as is often

now the way, ordered the parties and counsel to withdraw, and they then debated whether the Master being an interested party could properly testify. The decision was that he could be a witness. He testified "yt Hans Peterson seeing him look angerly bid him not be angry, for that he would bring his Servts off, and yt he was sorry for what he had done & yt it was don in his Passion." A witness was then called who gave a very clear account of the whole transaction. He said: "ye Mr. Invited him on board and goeing both together there they found Hans Peterson's wife with some other women. A short time after came Hans Peterson on board with a Complaint that some persons belonging to ye Shipp had killed his Hoggs. Hans's Wife did then declare yt ye person that killed the hogg had before acquainted her with his purpose of doeing it, and after ye hogg was Killed did give her notice thereof that his Master might be charged with it, the Master having before agreed with Hans for pork for his men, and yt she told him he might Carry it on board. And further saith yt ye said Hans did at ye same time owne yt ye Mr. had spoak to him to lett him have some fresh pork for his people, and yt he had promised they should. And further yt ye said Hans said that provided he was payd for his Hogg he Would be contented & yt ye Master agreed to doe it." The decision was that Dearing should pay one pound three shillings

for "ye hogg they killed" and that Peterson (unfortunate prosecutor) should pay five pounds ten shillings costs. If the same testimony was presented before the Circular Court, it would certainly seem that in permitting the defendants to be convicted of larceny and Harrison of perjury the Chief Justice was in error.

BUDD vs. THLENMAN.[1]

[17th, 9th mo., 1685.]

On the 17th of 9th month, 1685, "The Petition of Tho. Bud was Read, requesting a Special Court to End a Difference between Phill. Thlenman & himself. The Councill sent for Phil. Thlenman and advised them both to goe together and try if they Could friendly End it between themselves," and the chronicler informs us "ye wch they did." The appointment of special courts by the council seems to have been of frequent occurrence. On the 1st of the following 10th month, on the receipt of a letter setting forth that David Davis was imprisoned in Bucks County on suspicion of having killed his servant, the council appointed a special commission of five persons "to hear and determine all heinous and Enormous Crimes" in that county that should be brought before them at the time fixed.

[1] Colonial Records, Vol. I, p. 167.

In re KNIGHT.[1]

[16th, 11th mo., 1685.]

A precedent for the License Court is contained in the following brief memorandum made under date of 16th of 11th Month, 1685: "Ordered yt Joseph Knight have 3 months time given him to sell off the Drink & Provision he has in house & afterwards to provide some other way for a Livelyhood & not to Keep Ordinary longer in ye Towne."

In re——————[2]

[27th, 6th mo., 1689.]

In the court of Quarter Sessions of Chester County on the 27th of 6th mo., 1689, a case of fornication and bastardy was called. The parties appeared before the court and confessed their guilt. They were both called to the bar "and upon her further confession and submission a jury of women whose names are under written ordered to inspect."

The jury impanelled for the purpose were Lydia Wade, Sarah Usher, Hester Rawlence, Mary Carter, Jane Haukes, Mary Hodskins, Elizabeth Musgrove, Mary Bayliss, Elizabeth Hastings, Mary Little, Jane Moulder, and Anne Saunderlaine.

This jury de ventre inspiciendo discreetly returned that they could not find that the defendant was pregnant, "neither be they sure she is not."

[1] Colonial Records, Vol. I, p. 167. [2] Hazard's Register, Vol. V, p. 158

THE PROPRIETOR vs. CLEWS et al.[1]

[1st mo., 1693.]

Before the same court in 1st month, 1693, John Clews and Elinor Arme, who were at that time married, were presented for having committed fornication. They pleaded guilty and submitted themselves to the order of the court. It was directed that they pay a fine of fifty shillings, give security for its payment within six months, and further that the said Ellinor should stand at the whipping post for a quarter of an hour with a paper upon her breast bearing the inscription: "I heare stand for an Example to all others for committing the most wicked and notorious Sin of Fornication."

In re NEGROES.[2]

[4th, 5th mo., 1693.]

The following order was made by the Court of Quarter Sessions for the county of Philadelphia upon the presentment of the Grand Jury, on the 4th of July, 1693. It ought to be remembered that this was during the Governorship of Benjamin Fletcher and at a time when Penn had been temporarily deprived of his Province through the change in the political situation in England. The order directed "the Constables of Philadelphia, or anie other person whatsoever, to have power to take up negroes, male or female, whom they should find gadding abroad on the first dayes of the week, without a tickett from their Mr. or Mris, or not in their Compy, or to carry them

[1] Hazard's Register, Vol. V, p. 158. [2] Colonial Records, Vol. I., p. 380.

to goale, there to remain that night, & that without meat or drink, & to cause them to be publickly whipt next morning, with 39 lashes well laid on, on their bare backs, for which their sd Mr. or Mris. should pay 15d to the whipper att his deliverie of ym to their Mr. or Mris. & that the sd order should be confirmed by the Lieut. Governor and Councill."

In re PETITION OF LAWRIER. [1]

[18th, 4th mo., 1695.]

The somewhat unusual question of the right of a guardian to remove minors from the jurisdiction of the court came up before the council sitting as an Orphans' Court, June 18th, 1695. Harman Lawrier presented a petition setting forth that there were four children belonging to his sister in the county of New Castle, and undertaking "to take such care of yr education as becomes their qualitie and his relation to ym," he asked to be permitted to remove them to New York. "It was the opinion of the Govr & Councill yt ye sd Harman take the children yrin named into his Care & Custodie, & after he has made such satisfaction to the pties yt have keept them as is reasonable & given securitie to ye Justices of ye Court for Indemnifying the said Countie against the sd children, He may transport ym outt of this government to New York."

[1] Colonial Records, Vol. I, p. 479.

In re PETITION OF KEYS.[1]

[21st. 3d mo., 1697.]

This application made May 21st, 1697, shows how little the practice in the Orphans' Court has changed in two centuries. Mary Keys presented a petition setting forth that she was the widow of Richard Keys, that the inventory of his personal estate amounted to but 142 pounds 15 shillings, that the debts within her knowledge were 191 pounds 7 shillings, that the personalty was not sufficient to pay them "farr less to educate & maintain her & her two poor children," and asked authority to sell a portion of the real estate "Towards ye defraying of such just debts, the education of Her children, her owne support, and the better Improvement of ye remaindr of the said estate to their advantage." The court appointed William Clark and Edward Shippen to inquire into the truth of the allegations and report. After they had reported upon the facts it was ordered that she be empowered to sell and convey "the brick house in the Second street in the town of Philadelphia."

ENGLAND *vs.* MULLINAX.[2]

[7th, 2d mo., 1693-4.]

February, 1693-4, Philip England presented a petition to the Council containing the following statement of fact:

He had been authorized to keep an "Ordinarie and

[1] Colonial Records, Vol. I, p. 511. [2] Colonial Records, Vol. I, p. 437.

Ferrie att Schuilkill" by the proprietor October 16th, 1683, in an order "Charging that no person presume to transport anie passengers for monie or reward over the said river neer the sd ferrie," which order had been confirmed by the then existing government, and a lease granted to him "for a certain term of years att the yearlie rent of sevn pounds." He had settled himself and family there and had been "att great charges to fitt and accommodate the same with boats & Canoes and in making a convenient Landing place on both sides of the river both for horses and passingers." William Powell in contempt of this authority had for a long time ferried people and horses over, and within the last six months "erected a boat" to the great detriment of the petitioner. Upon being called to account for this contempt before the Council in 1693, he "pretended to sell the sd boat to certain people who doe employ one Nathaniell Mullinax to ferrie them over." Mullinax having appeared and being interrogated as to who first employed him answered that "most of the people of Harford & Marion & some of Darbie" hired him and that "he knew no reason why he might not work for his living as well as others." It was ordered that he be committed to the common jail till he give sufficient security "that hee shall ferrie no more persons horses or cattle over Skuilkill att Wm. Powell's for gift hyre or reward directlee or indirectlee and that his boat be forth with seized and secured by the sheriff."

From all which it appears that monopolies and "corners" are by no means of recent invention.

In re BAYNTON.[1]

[19th, 3d mo., 1698.]

At the meeting of the Council, May 19th, 1698, Ann Baynton presented a petition setting forth that her husband Peter Baynton, late of Chester county, some years ago removed himself and most of his estate to England and left her destitute, promising soon to return, that he lately sent her a letter saying that "hee has taken another wife there & never intends to return hither nor take any care for her subsistence," and that he intended to take his remaining effects to England and leave her wholly destitute. She asked for an order enabling her "to take and possess all that is Left or can be found of her sd husband's estate within this governmt." It was ordered that she should take whatever was left of his estate, that any person having property belonging to him in his or her possession should on sight of the order deliver it to the petitioner, and her receipt should be received as an acquittance in all the courts.

Justice was thus satisfied though perhaps with somewhat of a rude hand.

[1] Colonial Records, Vol, I, p. 536.

ADAMS vs. WEBB.[1]

[24th, 7th mo., 1698.]

In June, 1698, John Adams shipped from New York to Philadelphia in the sloop Jacob several sorts of English goods, five bolts of canvas, and five half barrels of East India goods which for want of a certificate were seized at New Castle, by the collector of customs and given into the custody of Robert Webb, marshal of the Court of Admiralty. It would appear that an admiralty court, though then in contemplation, had not been fully constituted, because the marshal had not yet received his commission and the attorney for the crown had not been appointed. Adams made application to Lieut. Governor Markham, who promised to aid him and advised him to arrange with the collector at New Castle. The collector was obliging, and gave him hopes of getting his goods upon an appraisement until the admiralty court should be fully organized. Meanwhile his certificate arrived from New York and he showed it to Robert Quarry, Judge of the Court of Admiralty, who told him that if he had a thousand certificates he could not get the goods except by suit, because the master of the vessel had not been legally qualified. Adams asked then to have the goods appraised and offered to "give in good securitie to ansr it att court," and was promised that "when ye advocate (yt is to be) had been att New York & come back again I should have ym deliverd to me instantly." He then went to New

[1] Colonial Records, Vol. I, p. 541, et seq.

York, saw the attorney and again appealed to Quarry, but though promised assistance he was in his own language "still putt off wt fair words but no such actions." Thereupon he presented a petition to Markham asking that he might have his goods on an appraisement by sworn appraisers or in any other way, and setting forth pathetically "being fallen away since I came almost to skin & bones by Continual Concernedness for my hard Unheard of Usage; the great destruction of my business att home & abroad; the impairing my Creditt the best Jewell I have; the utter unavoidable Ruine of my dear wife and chil dren; ye smal or no advantage that can redound to his Matie or yor Honr by withholding ym from mee." The Lieut. Governor made answer that he "wold not medle with anything that Lay before the Court of Admiralty." The next day, August 20th, Quarry went to Maryland to see about the commission of the attorney for the crown and his absence gave Adams an opportunity of which he at once took advantage. He applied to Anthony Morris, Samuel Richardson, and James Fox, then sitting as Judges of the county court and who, it would appear, looked with little favor upon the new admiralty court or its processes. They issued a writ of replevin which was executed by the under-sheriff, and the goods were taken from the marshal and delivered to the owner. Before taking this course they consulted with David Lloyd, the most learned lawyer and perhaps the most vigor-

ous character then in the Province, as to its legality and its probable consequences. The marshal, whose lately created dignity had been thus early insulted, hastened to Markham who wrote to Sheriff Claypoole: "It was but yesterday that I was petitioned for a Replevin which I refused; & I think I have as much power as any man in this governmt. What complaints & damages may arise from this Let the actors ansr for. Since I cannot undo what's done I will declare agt ye proceedings of all who were concerned in it. My advice to you is & I expect that everything you have taken by virtue of the warrt of Replevin be forthcoming in its proper specie." The sheriff displayed proper meekness and replied that Adams "came to mee about foure in the afternoon yesterday and desired to have a Replevin of certain goods that was taken from him by Robert Webb not naming him to mee by any office & the writt named him Robert Webb gentl. I knew not that it in any way interfered with the Court of Admiralty neither did I either hear or know any ways that he had ben with you. Replevins have been always here granted by the Justices and never questioned by the Sheriff, no more than writts of arrest;" that he had taken security in 300 pounds and if he had known would not have meddled without the approbation of the Lieut. Governor. The marshal posted out of town after Quarry and overtook him at New Castle and there drew up a narrative to which he made affidavit and

Quarry sent several copies of it over to England "wt Comments as large as the Circumstances of the thing wold bear" and endeavored to cast blame upon the Lieut. Governor, who certainly was in no way responsible. Markham reported the matter to the Council asking their opinion since "Col. Quarry Judge of the Admiralty aggravats it as an action of ye governmts" and they passed a resolution that it was no act of the government and that the governor was in no wise consenting to it. On the 26th of September the county judges Morris, Richardson, and Fox came before the Council and presented in writing the following spirited defence of their action:

"First, that we look upon a Replevin to be the right of the King's subjects to have & our duties to grant where any goods or Cattle ar taken or distrained.

2dly, That such Writts have been granted by the Justices & no other in this government, the p'ties giving bond with Surties to the sheriff for redeliverie of such goods in case ye pltf. in the replevin be cast, according as is usual in England in such cases.

3dly, That since wee understood how the goods in Question wer Seized & secured in ye King's store house, we might have just grounds to conceive that the Sheriff might be as proper to secure the same to be forthcoming in specie, as by the Replevin he is Comanded, as that they should remain in the hands of Robert Webb who is no proper oficer as we know

of to keep the same nor hath given any Security or Caution to this governmt to ansr the king and his people in that respect as wee can understand.

Lastly, that wee att our last court, finding this matter to be weighty, tho' wee did not know of any court of admiralty erected, nor psons Qualified as wee know of to this day to hold such court, yet wee forbore the triall of ye sd replevin, & Continued it untill we further advised, & so the pties are to come before us again att next Court where wee should be glad to receive some advice yrin from you."

The next day they were sent for again and, on appearing before the Council, Markham made a condemnatory speech to them saying: "yt Coll. Robt. Quarry and mr. John Moor had ben with him and told him yt in ye sd Last County Court there were great reflections made upon Coll. Quarrie's pson and his Comision; And the Court permited a petion to be read in Court that had many reflections in it upon said Coll Quarry wtout any reprimand or notice taken of it. Gentl. I am sorry to Hear and unwilling to believe these things." Up to this point the Judges had maintained their position with logic and with becoming fortitude. Quarry had represented, however, their conduct to the authorities in England as an encouragement to piracy and illegal trade and strong resentment had been aroused. Penn, who had only recently recovered control of his Province, after having been deprived of it for some years, was natu-

rally anxious to give no cause for offence to those in power that could be avoided. When, therefore, he came over to Philadelphia, the matter was fully investigated. At the meeting of the Council Dec. 22, 1699, Penn being present, Anthony Morris appeared and said, "that hee had for some years past served ye king & Country as such to his great trouble & private detriment, and delivering to ym 4 paps. relating to ye goods of one Robert Adams" continued "yt hee now came before ym to Lay down & did lay down his Comission of Justice; and further said yt hee granted & signed ye sd replevin in psuance (as he thought) of his duty, believing hee was in the right & yt hee was induced yrto by advice of those that hee thought wer well skilled in ye Law, who told him yt it was the priviledge of the subject; and further said yt hee had no interest in the owner nor goods nor no selfish nor sinister end in so doing." Penn replied to him, "That his signing ye sd replevin was a verie indeliberate rash & (in his opinion) unwarrantable act;" and taking the two inventories, the appraisement, and the bond with security for 327 pounds, 8s and 6d he handed them over to Quarry. The position of Morris was unenviable. Frowned upon and deprived of his commission, accused abroad and deserted at home, his cup of humiliation was not yet drained. Quarry called him again before the Council Jan. 24th, 1699–1700, and after reciting the occurrences and the loss of the goods, said, "what

came of ym the sd Anthonie best knew. That this his action was no less than to question whether his Matie or ye sd Anthonie has most power. The act of parliamnt is for us, & hee cannot pretend ignorance, having ben so long a Justice yt hee became verie insolent & by this his action he has affronted ye king (what in him Lay) & has broken his laws & invaded his privileges & Courts" and he "Therefore desired his Honor & Councill to think of a method of prosecuting sd Anthonie for ye sd violaons & to make good ye said apprised value of ye sd goods to ye king."

Morris could only urge in reply "that his signing the sd replevin was an act of ignorance & not of malice agt ye king, his laws & officers" and "yt it look't verie hard yt any Justice should sufer for an error in judgment; & further added that if it were to do again he would not do it." Penn then promised to secure the appraised value of the goods without charge or trouble to the officers of the admiralty court and Quarry magnanimously responded, "yt for his part hee was well satisfied wt ye Pror & Gor's promise & Mr. Morris' submission."

The Judge having been suitably humbled, Quarry now turned his attention to the counsel who had made himself obnoxious in the objectionable proceeding. Together with John Moore, advocate of the admiralty court on the 14th of May, 1700, he made a

charge against David Lloyd because of certain "irreverent speches & postures of & agt ye broad seal of England & ye king's picture & a tin box appended to ye lords of ye admiraltie of England yr Comission to Robt Webb ye marshall of sd court in a certain Court held at Philad. some time late past." The memorial set out that the goods having been seized and stored in the king's store, Lloyd, in contempt of the laws and jurisdiction of the admiralty, influenced and advised the justices, by force and arms, to "force ye goods outt of ye sd store;" that he advised and prosecuted an action at the succeeding county court for detaining the goods against the marshal; and when the marshal, in his own defence, produced his majesty's letters patent under the broad seal of the high court of admiralty, with the judge's warrant for the seizure, which patent had on it stamped the effigy of his most sacred majesty, and a pendant seal, he, in a most insolent and disloyal manner, took the commission in his hand, and, exposing it to the people, uttered these scurrilous words: "What is this? Do you think to scare us wt a great box (meaning ye seal in a tin box) and a little Babie (meaning ye picture or effigies aforesaid). Tis true, said hee, fine pictures please children but wee are not to be frightened at such a rate;" that at a court of admiralty, held in Philadelphia, he, in open court, with a design to incense and irritate the people, and expose the king's officers to their fury, said publicly

that "yt Court did not sitt there by anie Comission from ye king;" and that in Council he declared "yt whoever wer instrumental or aniewise aiding in erecting & encouraging a Court of admiraltie in this province were greater enemies to the Liberties & priviledges of ye people than those yt established & promoted ship monie in king Charles the first's time."

For these bold utterances, indicating a dawning spirit of independence and a courage to assert it, he was suspended from his position as a member of the Council until he should be tried; but it does not appear that he suffered any further ill consequences, and he continued for many years to be the leader of the popular party in the Assembly. A thorough study of the life and work of this earliest of the great lawyers of Pennsylvania would be an interesting task; and a complete biography of him would be a most valuable addition to the literature of our profession.

KOSTER vs. POTTINGER.[1]

[19th, 11th mo., 1694.]

Under the charter granted to Germantown on the 31st of May, 1691, a court of record was established, which began its sessions on the first of October of that year. The proceedings were simple in form and a large part of its time was taken up with the settlement of disputes concerning the maintenance of

[1] Collections of the Historical Society of Penna., p. 244.

fences and stray cattle. Actions were, however, occasionally brought and conducted with all due regularity. In the present case the declaration of the plaintiff charged "that the said Johannes Pottinger on the 19th day of the 11th month 1694 at Germantown did make an assault upon the said Johannes Koster and him did pull push and evilly handle against the King's and Queen's peace and to his the said plaintiff's damage of 3 pounds and thereof he brings suit &c."

The answer was "that there was more in the plea than he had done." Four witnesses were sworn and the jury found a verdict for the plaintiff for three shillings.

In re KEURLIS.[1]

[7th, 3d mo., 1695.]

This case constitutes another precedent for the license court. On the 7th day of 3d month, 1695, Peter Keurlis was attested and asked "why he did not come when the Justice sent for him." He answered he "had much work to do."

He was again asked: "why he refused to lodge travellers."

Answer: "He only intended to sell drink but not to keep an ordinary."

Then he was asked: "Why he did sell barley malt beer 4d a quart against the law of this province."

Answer: "He did not know such a law."

[1] Collections of the Historical Society of Penna., p. 246.

Lastly he was asked: "Why he would not obey the law of Germantown corporation which forbids to sell more than a gill of rum or a quart of beer every half day to each individual."

Answer: "They being able to bear more he could or would not obey that law."

The court decided "that if he would not in the first place get a license, and secondly obey the laws both of the province and of this town, such were read to him, he should sell no more drink at all."

He replied: "I think you must first let me spend the malt I have." The Bailiff told him: "No. But from henceforth thou shall sell no more drink on pain of 5 pounds."

FALCKNER et al. vs. OP DEN GRAEFF et al. [1]

[7th. 9th mo., 1700–1.]

This cause is commended to those counsel who are unprepared when their cases are called for trial.

"Abraham op den Graeff and Peter Keurlis were sent for to answer the complaints made against their children by Daniel Falckner and Johannes Jawert, but the said Abraham Op den Graeff being not well and Peter Keurlis gone to Philadelphia, this matter was left to the next session."

[1] Collections of the Historical Society of Penna., p. 248.

In re CORONER'S INQUEST. [1]

[11th, 9th mo., 1701.]

"James Delaplaine Coroner brought into this court the names of the jury which he summoned the 24th day of the 4th month 1701 viz: Thomas Williams, foreman, Peter Keurlis, Hermann Op den Graeff, Reiner Peters, Peter Schumacher, Reiner Tyson, Peter Bon, John Umstat, Thomas Potts, Reiner Hermanns, Dirck Johnson, and Herman Tunes. Their verdict was as follows: We the jury find that through carelessness the cart and the lime killed the man. The wheel wounded his back and head and it killed him."

There can be no doubt that the purpose of this peculiar verdict was to enforce the forfeiture of the cart to the king for pious uses. Blackstone says Vol I, p. 301: "But if a horse, or ox, or other animal, of its own motion kill as well an infant as an adult, or if a cart run over him, they shall in either case be forfeited as deodands which is grounded upon this additional reason that such misfortunes are in part owing to the negligence of the owner and therefore he is properly punished by such forfeiture." This obscure and unknown case is, so far as I am aware, the only instance of the application in Pennsylvania of the principle of deodands.

It is true that in the year 1858 an anonymous writer in the city of Philadelphia, without reverence for the decisions of the then Supreme Court of this

[1] Collections of the Historical Society of Penna., p. 248.

State, and hoping to escape in darkness from the consequences of his ill deeds, published what purported to be a prospectus of forthcoming Arizona Reports containing a case of Tompkins vs. The Commonwealth, wherein there is a decision upon the subject of deodands, but it is the mythical report of a ribald reporter. It is to be hoped that no copy of this prospectus, which was plainly intended as a slur upon our own august and learned Supreme Court, may ever come into the hands of any of you.

PRESENTMENT OF THE GRAND JURY.[1]

[3d, 1st mo., 1685.]

"to the Justices of ye peace for the town & County of philadelphia ye request of ye grand jurie for the Towne & Countie aforesd for & in yr owne & Counties behalfe is That all psentments made & presented by former and this psent Jurie may be duly presented according to Law without delay, That so the annoyances & greivances of ye people may be by you according to the Law made and provided in those Cases be removed & the Current of wickednes stopt, Therefore we earnestly desire yt you wold be pleased to Inform yorselves of those neglects by Searching the records by which you will find the Caves & Cabins or houses in ye king's highwayes, Tipling houses having no Lycenses, The breach of the Laws in severall ordinances, severall other necessarie present-

[1] MS. Docket.

ments unpresented, to the great trouble & greif of the Inhabitants. The 3d of the first mo. 1685.

Thomas hooton, foreman."

[3d, 12th mo. 1685.]

"Wee present Joseph Knight for Suffering drunkenness & evill orders in his Cave.

Hanna Goodin for keeping an Ordinarie without License.

Richard Russell for the same.

Wollo Swanson for selling strong Liquor promoting drunkenness.

Richard Turner for the same.

Jane dryver for selling strong liquor & keeping a disorderly house debauching youth.

Patrick and Lydia, Servants to thomas holme, for Committing fornication.

John Vause for marrying contrarie to Law.

All Caves by the water side as unfitt for houses of entertainment or drinking houses a great greivance & an Occasion to forestall the mercat.

Wee present the high way on the flatt on the other side Skuilkill opposite to the ferrie house as Insuficient for passage.

Wee present the want of a prison, the want of a Convenient road to be laid out from the ferrie at Skuilkill towards darbie.

Thomas Butterfield for breaking the peace in abusing Richard fforde while a prisoner.

[1] MS. Docket.

Samll hersent for not Securing in fetters Bethell Langstaffe when comitted to him for robbing Richard Reynolds.

George Bartholomew for Suffering drunkenness and evill orders in his house & as a man Capable to promote drunkennes & debauchery rather than to accommodate honest and Civill people.

Mary Leichfield so called for formerlie Comitting adulterie with one thomas Leitchfield under pretence of being her husband.

The want of a bridge in the road att North end of the Towne.

The want of a clocke of the mercat.

The want of a sealler of Leather.

All Caves by the water side as unfit for houses of entertainment or drinking houses or such as are anie occasion to forestall the mercat whereby the Inhabitants of the Towne doe sufer.

John Hart, foreman."

JOHN WHEELER vs. JOHN TEST.[1]

[1685.]

This case was called for trial upon some unknown day in the year 1685, and the plaintiff appeared by attorney, a letter of attorney being filed. The defendant also appeared and declared and affirmed that no declaration had been given to him. The court sent for the Deputy sheriff, Henry Reynolds, to in-

[1] MS. Docket.

quire whether he had given any declaration to the defendant. He returned for answer: "yt hee gave him none but yt hee heard both ye pltf & his brother declare yt ye sd pltf gave the deft a declaraon, wch ye deft did positivelie denie." The defendant then asked for a nonsuit, which the court granted with costs.

JOHN CROFT vs. WILLIAM NICHOLLS.[1]

[1685.]

Upon the call of this case, in 1685, the plaintiff appeared, but the defendant, though summoned, was absent. The plaintiff "craved judgment agt ye deft that he accompt," and asked the court to appoint auditors and to fix a time for them to report. The court gave judgment against the defendant "quod computet" and named Samuel Carpenter and Humphrey Morrey as auditors to adjust the accounts between them and to report at the next court, and directed the clerk to send a copy of the judgment to the defendant, in order that he might account and be present at the final hearing.

JOHN JONES vs. WILLIAM BERRIE.[2]

[1685.]

The plaintiff declared in 1685 against the defendant for the sum of thirty-one pounds seven shillings and two pence current money of the province, a due and true balance of all accounts made up betwixt

[1] MS. Docket. [2] Ibid.

them "to the 26th of 7ber last on which day ye sd acct was made up & to be paid at Philadelphia."

The defendant by his attorney Charles Pickering, whose letter of attorney was "allowed by ye bench," by his plea denied that "yt or anie acot was made up." The plaintiff then produced the account and a bond executed by the defendant for the sum payable in silver money, and averred that "yrafter ye sd Berrie scratched out his name and wold not deliver it." He then called Benjamin Chambers and John Fuller who testified "yt they saw sd Berrie sign the said bond and thereafter scratch out his name & being called to be witnesses to an obligaon they heard the pties dispute about the specie & heard said Berrie acknowledge he owed the plf about thirty one pounds & odde money but yt hee was not willing to pay in silver but in Countrey produce & then scratch out his name."

The court gave judgment for the plaintiff for the full amount.

SAMUEL ATKINS vs. JOHN FISHER.[1]

[1685.]

Upon the call of this case for trial in 1685, the defendant did not appear in person but by his son, Thomas Fisher. Pickering asked for a continuance until the next term of court in order that John Fisher might be present. "The court continued this

[1] MS. Docket.

action by consent of ye pltff to next Court & ordered yt ye deft should then be readie to come to triall otherwise judgmt should pass agt him." The court granted a continuance upon what now would be called a "Peremptory order."

The last four preceding cases are from the earliest record of the courts of Philadelphia county now in existence. It is a manuscript in the handwriting of Patrick Robinson. The first dated entry, a part of the book having been destroyed, is "By the King's Authority. The 35th court of Wm. Penn &c being a Court of Quarter Sessions held for the town & County of philadelphia this 4th day of the nynth month 1685." Thomas Holme, James Claypoole, John Moon, Barnabas Wilcox, Wm. Frampton, Lasse Cocke, John Goodson, and Francis Daniel Pastorius were the justices present. It is noted that the high constables John Bevan, Henry Waddie, John Somers, John Boult, and John Day and the petty constables, Richard Orme, Giles Knight, Thomas Bradford, and John McCome were all absent. After the Governor's original letter had been read in open court "concerning the disorders in Ale houses & Caves," and the council had been requested to look into the matter and remedy it, the case was called of

RICHARD REYNOLDS vs. ELIZABETH SIMPSON.[1]

[4th, 9th mo., 1685.]

The plaintiff declared against the defendant, a spinster, for seven pounds, fifteen shillings, as the true balance of accounts made up betwixt them to that day which the defendant had acknowledged and promised to pay under her hand, and he produced the accounts and craved judgment. The defendant appeared and admitted two pounds to be due, but declared "yt through fear & being then in custodie when shee signed the said noat," she now pleaded "yt the pltff had no right to the bed demanded, as also ye deft desired yt ye accot of 16 shillings and 1d owing by ye pltff to her might be defaulcated." She was attested to this account and a jury was sworn who brought in the following verdict: "Wee the jurie do find Elizabeth Simpson to be indebted unto Richard Reynolds in the sum of one pound thirteen shillings & eleven pence Certaine & for two shirts & a pr of stockins one pound, if ye same be not returned."

ELEAZER COSSETT, *in re*[2]

[4th, 9th mo., 1685.]

The petition of the complainant set forth that "hee is an indented servant to ffrancis Scot & is willing to serve him or any other in this province, but yt his said Mr. intends to sell him out of the province into foreign parts agt the petitioners will, & to that end hath got yee petitioner on board a ship & threatens to put him in Irons to carie him away, and yrfor crav-

[1] MS. Docket. [2] Ibid.

ing release that hee may stay in this province and serve his time."

Upon examination of both parties in open court it appeared that the master "does intend to sell him where he can & yt hee was on board & had actuallie bargained with Thomas Branscom to take him to Virginia, but got ashore againe in the ship's boat."

In view of the fact that Scott lived in New Castle it was directed that he was "not to sell his said servant out of ye province but according to law" and that he be bound in the sum of thirteen pounds "to carie his said servant unto New Castle & there to present his said servant before the Mag'rates yrof with his Indentures by them to be ordered as they should see cause."

In re PRISON.[1]

[4th, 9th mo., 1685.]

"In pursuance of two former orders of last courts Samll Carpenter, Humphrey Morrey, Benjn Whitehead, and Nathaniell Allen, psons by the then grand juries entrusted to treat with workmen about the manner qualitie & charge of a prison Intended & to report to the then next court, they brought in the report following viz: By order within mentioned wee have advised wt Andrew Griscomb, carp'r, and Wm Hudson, bricklayer, & have considered of the forme dimensions and Charge of a prison which is as followeth, the house 20 foot long & 14 foot wide in the cleare, two stories, the upper 7 foot and the under

[1] MS. Docket.

6 1-2 foot high, of which 4 foote under ground, with all Convenient Lights doores and easements necessarie & Substantiall, strong with good brick, Lime, Sand & Stone fitting for the occasion, as also the floors and rooffe very Substantiall, a ptition of bricke in the midle through the house, so there will be foure rooms foure Chimneys & the Cock Loft, which will well serve for a prison & the goaler may well live in one part of it if need be. The whole will cost about 140 pounds."

PETER & BRIDGETT COCK vs. JOHN RAMBO.[1]

[7th, 8th mo., 1685.]

John Rambo, the defendant, had been bound over in the sum of five hundred pounds at an earlier court to appear and answer an indictment charging him with fornication andother misdemeanors. On the 7th of October, 1685, the bail "having been thrice called in open court," produced the defendant. The indictment, being the earliest preserved and being beside both interesting and curious, I shall reproduce entire:

"Countie of Philadelphia:

Peter Cock of Kiphah, in the countie of philadelphia, in the behalf of our Soveraign Lord the king and proprietarie and Governor of this province &c in his owne right, & Bridgett his daughter indicteth thee John Rambo, by the name of John Rambo of Passyanck in the countie aforesaid, for that thou having not the feare of God before thy eyes, but in con-

[1] MS. Docket.

tempt of our Soveraign Lord the king and Governor, did break the laws by them established in this province viz, the 17th and 120th Chapter of the great bodie of Laws where is enacted a law against house-breaking & fornication; But thou, John Rambo, the laws aforesaid not regarding, nor the penaltie of said laws anywise fearing, but craftilie designing the good name state credit & reputation of the said Peter Cock and Bridgett his daughter aforesaid to hurt and staine, and Bridgett, the daughter of the said Peter Cock, utterlie to ruine and undoe, did about the midle of the 12th mo. 1684 in the night time by force of arms breake into the dwelling house of the said Peter Cocke and did then & there forciblie, disquietlie, & mutinouslie & impudentlie frighten and disturbe manie of the said Peter Cocke's familie, and att that time aforesaid, keepe force and compell Bridgett the daughter of the said Peter Cock aforesaid to stay in bed with thee, and did then & there promise and firmlie contract thyself to marrie the said Bridgett Cock, upon which promise, by the instigation of the devill by thee aforethought, thou did then and att that time persuade her the said Bridgett Cock to yield & consent to thy will and pleasure in the carnall knowledge of her body, whereby the said Bridgett Cocke is become with child by thee, for which said horrible crimes thou stands indicted, and art guiltie, & hath incurred the pains in the said laws expressed for everie pound damage done by thee fourefold."

After this indictment had been read to the grand jury in open court, at the request of Charles Pickering, counsel for the prosecution, four witnesses were sworn. The grand jury with the witnesses then "removing out of court," after some time they returned with the indictment on which was inscribed "Wee find this bill. John King foreman." The defendant pleaded "Not guiltie in maner & forme and wold be tryed by the countrie." After a jury had been called and attested Margaret Cock, a sister of the prosecutrix, aged about nineteen, testified:

"Sometime in the winter after Christ-mass Last, the exact time shee knows not, John Rambo about midnight opened a planke in the chamber over where shee and her two sisters Lay, and jumped downe into their roome and then into the bed, who told them hee wold Lye in the bed where they were. Wee answered hee should not. He said hee wold. Wee said, no, wee wold goe out of the bed then. Hee let me & sister goe and held Bridgett fast and wold not Lett her goe. So I and sister Katherine went out of the bed and Lay downe upon the floore all the rest of the night in the same roome, and wee were frighted when hee made a noise over the chamber, and I fell asleepe presentlie, and aboute breake of day he wakened us & said nothing to us and went away, but wee saw him not breake open the planke."

Catherine Cock, aged sixteen, deposed:

"that shee could not tell the time of the yeare, but it was in the winter time after Christmass, that the said John Rambo went up into the Loft but knew not how till hee jumped downe. The deponent heard a noise about midnight, and a plank opened and John Rambo jumped downe into the roome & then came into our bed where the deponent and her two sisters were. When hee spoke wee knew him. Hee said hee wold lye in the bed. Wee said no. So he jumped in the bed. And so ther was not roome. So my sister and I went out of the bed and left Bridgett there, and I & sister Lay on the floore a little way from the bed till day breake. The deponent heard him ask Bridgett (about an houre after the deponent and sister left them) if she wold have him. She answered no at first and then asking her againe shee said yes, & the deponent heard him say the devill take him if he wold not marie her. And hee stayed there till morning, and hee heaved himselfe downe on our bed on the floore & yn said he must goe out of the doore now."

William Orion, deposed:

"that when Andrew Rambo was married to Peter Cock's tother daughter I heard John Rambo, between the dwelling house and cow house, about midnight, say to Bridgett Cock, God damme me my brother hath gott one sister and I will marrie tother."

Lasse Cock, brother of Bridgett, deposed:

"that about the end of Febru'y, or beginning of March Last, his sister Bridgett & his father's servant went to the mill with corne, & either in their going or returning, they stopt at George Foreman's house, and John Rambo got his sister into foreman's house, who said John Rambo you are going to cheat me, who answered God damme me I shall never marrie another woman but you, and hee came comon lie to us all the children, & to my house where my sister was."

The verdict of the jury was: "Wee the jury doe find John Rambo hath promised to marrie himselfe with Bridgett Cock and that hee did enter the Lodging roome of the said Bridgett, and did there Lye with her in bed for the space of severall hours in the night Season, of which crime we doe find the said John Rambo guiltie."

The court thereupon entered the following judgment:

"that they doe enjoyne John Rambo to marrie Bridgett Cock before shee be delivered according to law, but if at her the sd Bridgett Cock her deliverie shee father the child on the sd John Rambo & he be not then actuallie married to her, then the court does fine the said John Rambo in the sum of ten pounds & the said Bridget Cock also in the sum of ten pounds & further adjudges that the said John Rambo keep the child if laid to him att the said Bridgett Cock's deliverie & further ad-

judges the said John Rambo to pay the costs of sute."

At the close of these proceedings Peter Cock the elder "was (for swearing in the open face of the court By God) fyned five shillings."

The facts of this case, though repulsive in that they illustrate the mean instinct of the male of the human species which often leads him, whether in the hut of the Swedish peasant or the palace of the English kings to desert his partner and his offspring, are of value to the lawyer since they give us an entire prosecution from the binding over to appear to the final judgment of the court, and to the historian since in the evidence is accidently preserved a quite complete picture of the dwelling, mode of life, language, and manners of one class among the early settlers of Pennsylvania.

At the 36th court, commencing February 3d, 1685, before James Claypoole, Wm. Frampton, Humphrey Morrey, Wm. Salway, John Bevan, Lasse Cock, and Wm. Warner, Justices, these cases were tried:

HARMAN OP DEN GRAEFF vs. JOHN COCKE.[1]

[3d, 12th mo., 1685.]

An action of Trover and Conversion was brought against the defendant that "hee render to him the sum of 4 pounds 10 shillings as the price of one barrow, sowe and six piggs, Lost by the plff, came

[1] MS. Docket.

to the hands of & was converted to the defts use, and craves judgment not onlie for the said sum of 4 pounds 10 shillings but also for the like sum of 4 pounds 10 shillings damages with cost of sute."

The defendant pleaded "that neither the said barrow, sowe, nor any other of the plffs hoggs came into the hands or wer detained by ye deft & that the said action is vexatious &c."

Jan Lucken deposed: "that the sow yt John Cocke sold was the plfs sowe."

John Lensen deposed: "that hee knew the plfs sowe & that was it that the deft sold to Aaron Underleighe."

Walter Symons deposed: "that hee knew the plfs sowe & that it was the same by the marke colour & size, being full grown before she went away, which the deft sold to Aaron Underleighe."

John Moon deposed: "that he the said John (Cocke) deft confessed befor him & Goodson, then Justices of the peace, that he took up a sow inn ye woods & sold her in Germantown & brought his brother Mounce Cocke to depose that it was the defts sowe, & ye germans brought three witnesses to depose that it was theirs, & yt ye deft afterwards (came) to the deponent with the two germans, and the clarke came afterwards, & ye deft desired ye dept to let ym agree, & the depont asked why they wold agree now & wold not the other day, & ye depont asked what agreement they wold make, & ye deft answered he

wold pay the plff either in goods or in as good swine again."

Peter Nelson deposed: "that the hoggs wer coming & going about his house these 18 mo."

Lawrence Heyden deposed: "that hee heard them talk of an agrement."

The jury on the 3d of 12 mo. 1685 brought in a verdict for the plaintiff, on which the court entered a judgment of nine pounds, with costs, and ordered execution.

In re LAWRENCE EVANS.[1]

[3d, 12th mo., 1685.]

"Ordered by the court that Wm powell Constable carie home to Barnabas Wilcox Lawrence Evans servant to John Hart of Bristoll for whom said Barnabas is attorney and that the said Barnabas pay to the constable 14 s. expended on ye said servant by Joseph Knight in his sickness otherwise that hee deliver not the said servant to him & that the constable if hee receive it pay it to said Knight."

JOSHUA TITTERIE vs. BENJAMIN CHAMBERS, president of the Society.[2]

[3d, 12th mo., 1685.]

The plaintiff, a broad glassmaker, declared against the defendant, as president of the Society of Free Traders, for the sum of 163 pounds, 15 shillings, and 7d for salary under a contract from the 28th of 12mo. 1683 until the 6th 11th month 1685–6, and

[1] MS. Docket. [2] Ibid.

for 11 pounds 18 s. "for fyring & houseroom which ye deft shold have but did not provide for ye plff" and for 3 pounds 15 s. disbursed "allways allowing for & defalcating what the deft can make appeare he hath paid thereof." The jurymen were called and "after all these jurors wer attested by foures" the defendant "put in a long plea of severall sheets extant in proves." The plaintiff then produced the original articles, the account of his disbursements, a "certificate of his honestie & Conversation," and a "letter from his brother," and called as a witness Richard Townsend who deposed: "that the first pott was finished by the plf in the time as the plf declares" and "yt the plf came to dyet at his house the 14th of 8th mo. 1683." This testimony was corroborated by Richard Hall and Elizabeth Hall.

James Claypoole deposed:

"that the plff latelie came to the defts house and the deft offered him 120 pounds with what hee had paid him before which the plf refused & wold abate nothing of his accot."

For the defendant Richard Hughes deposed:

"that hee wrought with the plff 2 or 3 weeks in England & that hee never saw him make a bitt of broadglass & that when the plff went in to Scotland John Litle told the depont that the plf was accompted no workman, and that the depont knew not

but that the plf may be a workman for hee never saw him tryed."

William Preston deposed: "that hee knew the plff 2 or 3 years & that hee had wroght att times att furnace-making in the same glass house, and that hee knew much of his incapabilitie in his ye plffs infancie but knew nothing of his capabilitie, and that that Insufficiencie was both before and after he was bound apprentice, and that by reason of his Insufficiencie was by one of the partners in an English glass worke, being an angrie & passionate man, rejected from the glass worke & that this was a yeare before hee agreed with the societie."

Richard Townsend being recalled said: "that the pott from which the plf comences his wages had the day of its making writen upon it, & stood about a yeare after, & for what hee knows it may remain still."

The jury found for the plaintiff, and the court entered judgment on the verdict in the sum of 131 pounds 15 s. The defendant then asked for an appeal to the provincial court by reason "of error and grievance in the judgment" and, upon his giving security and paying the costs, the appeal, with the consent of plaintiff, was granted.

PROPRIETOR vs. WILKINS.[1]

[3d, 1st mo., 1685–6.]

The 37th court was opened March 3, 1685–6, before James Claypoole, Wm. Salway, Humphrey Mor-

[1] MS. Docket.

rey, Lasse Cock, William Bevan, and William Warner, Justices. The first case brought before them was that of Martha Wilkins who "did acknowledge and Confess that she is with child & that John Moon is the father of it, & yt shee never knew anie other man but her master, & yt shee was not tempted to it by any promise of marriage." After a true bill charging her with fornication had been found, and she had pleaded "guilty," she was asked by whom she would be tried and she answered: "By the bench of Justices without a petty jury." Samuel Hersent, attorney for the king, governor, and prosecutor, thereupon raised an interesting question of law. He contended "yt it was contrarie to ye law to try ye prisoner wtout a pettie jurie, & yt her pleading guiltie was but in lieu of witnesses shee being a witness against herselfe, & yt pleading guiltie was but her Conviction & not her trial, And yrfore requested shee might be tryed by a petit jurie, the bill having been found by ye grand jurie, especiallie considering that Everie Criminall must be found guiltie by two Juries att least."

The court, however, overruled the application, tried her themselves, and sentenced her to pay a fine of ten pounds, to give security, and pay the costs. John Moon, her master, promised to pay the fine and sign the bond "and so she was discharged."

Moon was also tried, convicted, and sentenced to pay a fine of twenty pounds, to give security for

"keping of the child when the same shall be borne" and to pay all the costs of both the prosecutions.

RULE OF COURT.[1]

[3d, 1st mo., 1685-6.]

"Ordered by this Court that it stand a continuing rule for this court, & the Courts succeeding, that no person nor persons whatsoever presume to speake in or Interrupt the said Court without Leave first asked and then given by the bench, and that whoever does in the Contrarie shall be fined, or otherwise punished, att the discretion of ye bench, from time to time."

I call your attention to the fact that this first rule of court, rendered necessary by a habit which may even yet be in existence, has so far as the records show never been repealed, or rescinded. It had scarcely been promulgated before its application was required. Thomas Howell was "for breach of this rule fyned by the Court one shilling." It is with much regret that I am compelled to add "Hee saucilie ansered Let the Court gett it how they can."

PROPRIETOR vs. RUSSELL et al.[2]

[3d, 1st mo., 1685-6.]

Richard Russell, ship carpenter, Jane Dryver, widow, Joseph Knight, Hanna Goodin, widow, and Richard Turner, mer't, were indicted "for that you

[1] MS. Docket. [2] Ibid.

and everie of you having of Late kept a drinking house without License first had & obtained." Upon being asked whether they were guilty or not guilty Jane Dryver answered "yt what drink she sold in her house was only drink shee received in pay from her debtors."

Joseph Knight answered: "yt what hee sold was in right of John Fisher's license & as Manager for him & yt hee had a Lycense latelie for 3 mos."

Richard Turner pleaded guilty "& yt he was servant to Charles Lloyd."

Hanna Goodin answered: "that shee had a lycense for 1d pot beer but yt it was not received, and yt shee might be maintained by the County if shee be not permitted to sell drinke."

Richard Russell pleaded not guilty.

Hersent prosecuting attorney called William Orion who testified "yt hee hath seen money paid in the house of Richard Rusell for drink drank in ye house"; Jonathan Tomes who testified "yt hee had paid for syder and other liquor drank in ye house twice or thrice;" Thomas Holleman who testified "yt he heard Oberiah Arrosmith say yt hee spent a pr of 8ts in Richard Russell's house at one time & yt he hath heard unhandsome noises att unseasonable times in his house." The defendants being found guilty, Russell was fined five pounds; Richard Turner and Jane Driver "upon their Confession & promise not to transgress in such way hereafter were

excused;" and Hanna Goodin was fined five pounds "becaus it appeared to ye Court that her son, who lived in the cave with her entertained other men's servants, & dealt with ym, & entyced them to purloyne yr Mrs goods, but ye Court suspended execution for ten days yt if shee removed out of said Cave in yt time it should not be levied."

In re CAVES.[1]

[3d, 1st mo., 1685-6.]

"Ordered by this Court & that in pursuance of the Governor's letter read in Court That ye high & pettie constables, high & undersherifes, doe forthwith view what emptie caves doe stand in the king's highway, in delaware front street, (which way or streete is sixty foot broade), and that they forthwith pull down & demolish all emptie Caves as they shall find have encroached upon ye said street, in part or in all, and that they secure what odde goods they therein find for ye owners.

Whereupon John Barnes, Sussex, desired of ye Court some time to pull down his Cave in ye midle of ye streete. The Court granted him a mo. time to pull it downe & ordered him to fill up the hole in ye strete, to which hee assented.

Also upon request of Pat. Robinson the Court granted him a weeks time to pull down his Cave in sd streete."

[1] MS. Docket.

At the 38th court, before James Claypoole, Wm. Frampton, Humphrey Morrey, Wm. Warner, and Lasse Cocke, Justices, commenced April 2, 1686, Peter Banton complained verbally

in re RICHARD SHEPHERD[1]

[2d, 2d mo., 1686.]

"for coming away with him thence (Virginia) wtout a pass wherby said Banton is Like to be Considerablie damnified, & yrfor requesting this Court to order said Shepherd's back wt him again to virginia. The Court ordered said Banton to carie back the sd Shepherd att his the said Banton's going away & in order yrto signed a wrant in open court direct to the high sheriff to secure the said Shepheard till Banton's departure & then to deliver him up to said Banton to be caried back as aforesaid."

The 39th court was opened May 5th, 1686, before James Claypoole, Robert Turner, Wm. Frampton, Humphrey Morrey, John Goodson, Wm. Warner, Wm. Salway, and John Bevan, Justices.

GRIFFITH JONES vs. GEORGE BARTHOLOMEW.[2]

[5th, 3d mo., 1686.]

This cause originated in a contract concerning the "Blue Anchor," the famous Inn on Dock creek at which Penn landed upon his arrival in the province. Both parties appearing, the defendant by his attorney, Charles Pickering, the plaintiff declared "for

[1] MS. Docket. [2] Ibid.

25 pounds, Contained in a bond of arbitraon signed by ye deft to him, dated 2d of 2d mo. 1685, qrin he oblidged himselfe to stand to ye award of ye arbrs yrin mentioned but hath not pformed ye said awarde" and craved judgment. He produced "ye bond of arbitraon, & ye awarde itselfe, & a deed of sale signed & delivered to his attorney to deliver to ye deft, in pformance of ye plfs part of ye awarde." The defendant pleaded "yt hee never broke any part of ye award wch hee was bound to pform." and called Thomas Curtis who testified: "yt hee de'd to ye plff' smaid Joan Morris 2 pr oxen in Lieu of 22 pounds."

Joan Morris deposed: "yt by order of ye plf, qn her Mr., she rec'd 2 pr oxen from ye deft, & yt her Mr. ordered her to receive ym qnever brought, & yt she had ym to her Mrs. plantaon to her Mris. yr to remain till her Mr. should come home."

Thomas Graves deposed: "yt seing ye oxen on ye path ye deft asked him what they were worth, ye depot answered 22 pounds and better."

Thomas Curtis deposed: "yt ye award was signed on a 6th day, & ye sixt day yrafter ye oxen wer d'd, & yt ye oxen apprised att ye falls were ye verie same delivered to ye plf."

John Maddox deposed: "yt qn Working at Wheler's ye deft & Thomas Curtis coming thither said yt they had brought four oxen, & yt they gott John Pitkok & daniel Broomslie to apprase ym, who did prise

ym at 24 pound, & deposed yt one of ye apprisers said hee wold give ye money for ym."

The plaintiff in rebuttal called William Frampton, who testified: "that the plf gave him a deed & a lre of attorney to deliver ye same to ye deft, which hee ye deponent accepted of & sent for ye defts wife to Patrick Robinson's store & there acquainted her yrof, her husband being in ye Countrey, & yt ye plff told ye deponent yt if, before such a day, ye deft brought ye oxen, yt ye defts wold get John Boult & ye deponent sould get another man for the plff to prise ym, & ye deft having brought ye oxen sd hee was not content yt they sould be apprised, especially by a butcher, but yt the plff and hee sould agree about it, & so ye deponent went to ye plfs house & found nobody yr, & so wold not medle wt ye oxen."

Richard Bosens testified: "That Joan Morris brought 4 oxen to ye plantaon & told her Mris, here are 4 oxen from ye deft, & yt her Mris asked if they were apprised, ye maid said no, so Mris asked why did thou receive ym, she ansered becaus ye deft would not tell what to doe wt ym & yrfor hee sent ym up & bid her put ym up in the pasture, & if ye plf & he would not agree about ym ye deft said hee would pay for yr pasture."

John Boult testified: "yt hee was appointed by the plffs wife to apprise the oxen, & yt it was in June, & yt they were the same beasts he sawe in

the plfs pasture yt hee sawe at ye defts house, & yt he valued ym at 18 pounds."

The jury, of which Anthony Morris was the foreman, found a verdict for the defendant, and the court entered judgment and granted an appeal to the provincial court.

"But yrafter, by Consent of pties for a full determination of ye differences between ye plf and defendant, The Court ordered yt at or before ye 10th instant ye deft have in readiness to pay to ye plf Griffith Jones the whole arrearages of ye rents due for ye blue anchor, & yt ye same day Griffith Jones make to ye said George Bartholomew due estate for ye blue anchor, having first pd to ye sd Griffith Jones ye arrearages of ye rents due, and at ye same time but of a date posterior, ye sd George Bartholomew reconvey the same & all ye lotts in ye award mentned to ye sd Griffith Jones, by a legall Mortgage wt bond for pformance of Covenants for ye sum of 125 pounds, payable at ye terms in ye award mentned to ye sd Griffith Jones for his securitie of said sum, & yt Justices Morrey and Goodson see ye same pformed & yt both ye p's Conveyances be duly acknowledged in ye next Court according to law."

WILLIAM GUEST vs. PHILIP ENGLAND.[1]

[5th, 3d mo., 1686.]

The plaintiff declared against the defendant for that "from 13 febru last to ye 13 of 2d mo 1686, in

[1] MS. Docket.

all 58 days, the deft had entertained & harboured Xtop White, ye plfs servant, Contrarie to ye forme of ye statute in yt case provided," and claimed 14 pounds 10 s at 5 shillings per day.

For the plaintiff Charles Pickering deposed: "yt Edward Green jr. asked ye depont if hee would take up such a servant. Ye depont ansered (not knowing sd Green's circumstances) what hast thou to doe with him. Said hee I have a hue & Cry, & ye depo't afterwards being wt Tho. Holme, ye defendant Came and Complained to Tho. Holme yt ye plfs servant wanted necessaries, & was by his Mr. badlie used, & deposed yt sd Holme was angrie with Philip England for keeping ye plfs servant, and ye deponent thinks yt Philip England said ye servant was at his house but durst not be positive in it, and deposed yt yrafter he asked Philip England what became of ye plffs man, who answered yt he was gone away wt Edward Green."

Robert Turner deposed: "yt Philip England & ye plffs servant Came to ye deponents (then no Justice of ye peace) & told him yt there was a servant come from his Mr. through hard usage, & yrfor left his Mr. The deponent asked England why ye servant Complained not to ye Mag'rats of New Castle Countie qr hee lived. Said Philip England, ye Servant informes me yt yr is no Justice to be had in yt Countie. The deponent advised ye servt to return to his Mr. spedily, who seemd Inclinable to goe, and yrafter

said Philip England & ye servant went away together from ye deponent, who at yt time of this discourse wt him was in his Lott in ye Centre."

Griffith Jones deposed: "yt hee never sawe ye servant at Philip England's but onlie heard by hear say yt hee had been there, & yt ye meting of philadelphia advised ye servant (if hee had just caus) to Complain to ye Mag'rats of New Castle, and yt becaus neither ye plf nor his servant belonging to yr religious Societie they wold not Interfere wt ye Civill mag'trats office and place." The verdict was for the defendant.

Even in that early day a jury in the Quaker province declined to punish a man for giving succor to an abused runaway.

The 40th court was opened the 2d of 4th month 1686, before Robert Turner, Wm. Frampton, Wm. Salway, Wm. Warner, Humphrey Morrey, John Goodson, and James Claypoole, Justices. For the first time we find the adoption of a set of

RULES OF COURT.[1]

[2d, 4th mo., 1686.]

"Whereas many disorders have hitherto been Committed in the Courts of this County, partlie through the ignorance and partlie through the negligence of otherwise (we hope) well meaning persons, which if Continued in wtout remedy may be a means to bring

[1] MS. Docket.

Magistracie (wch is God's ordinance) & Courts of Justice into Scorne and Contempte:

The Court of Justices have therefore thought fitt, for prevention of ye like for the future, to make these Rules of Court following as additional rules to ye former order of Counsell viz:

1. That the high sherrif, or his lawfull & approved of deputy, Clarke of ye Court, & Cryer, and at Least one of the Towne Constables (by turns) doe Constantlie attend ye Court att the precise hours of sitting, and yt they dept not the Court wtout Leave under penalty of a fine.

2. That no pson that is not Immediatlie Conserned in the busines in agitation presume to speake wtout Leave under peine of a fine.

3. That plfs, defts, & all other psons speake directly to the point in question, & yt they put in their pleas in writing, (this being a Court of record) & that they forbeare reflections & recriminaons either on the Court, Juries, or on one another under penalty of a fine.

4. That all fines imposed upon any pson for totall absence, or untimely coming to Court, or for breach of these or other rules of Court hereafter to be made, shall be leavied on ye pties goods & chattells by way of distres, & yt ye execution therefore be signed in open Court before the Rysing of such Court yt Imposed the fine: & yt thes & other or-

ders, made or to be made, be hung up in a Cable evry Court day."

JAMES CLAYPOOLE vs. WILLIAM GUEST.[1]

[2d, 4th mo., 1686.]

The plaintiff's declaration was as follows:

"James Claypoole, of ye town and County of philadelphia, Justice of ye peace, Complains agt William Guest of ye Countie of New Castle, yeoman, in an actn of Slander & defamacon, to ye plfs damage one hundred pounds, ffor that whereas ye defendant, upon ye sixt day of ye 3d mo 1686, in ye publick house of Wm. Frampton, in the Town of philadelphia, in the hearing of Credible people did utter ye words following, viz: That hee the said plf was a knave and a rogue and that he wold prove it: By which slanderous & defamatorie words ye pltfe is damnified in his good name, trade, Credit and reputacon, qrin hee stood among ye good people of this province, to ye value of one hundred pounds, &c qrupon ye plfe brings this sute and Craves judgment of this Court agt ye sd deft for ye sd sum of 100 pounds damages and cost of sute &c."

Whereupon the defendant pleaded:

"And ye said William Guest, of ye sd Countie of New Castle, Justice of ye peace, for plea saith yt hee hath not slandered or defamed ye plffe to ye damage of 100 pounds, as ye pltff falselie declares, And saith yt hee knows no Credible psons yt either would or

[1] MS. Docket.

could hear or report such words as are in ye declaraon, for in all actns yther Civill or Criminall, pretended to be matter of words only, the whole discourse ought faithfully to be Collected, otherwise ye most Innocent may be accused by sly Informers of speaking treason &c.

And further ye deft saith ye plfs declaraon is too generall, for it names not ye ptended Credible psons. Since ye laws of this governmt allow ten days for ye deft to ppare for his triall, & to consider of ye declaraon, and since ye whole weight of ye ptended Complaint lyes in ye Credibility of ye witnesses, how can ye defendant make his defence since hee knows not his accusers, whom had hee known hee might in ten days time by good enquirie have Legallie proved Incredible.

And ye deft further saith that he reflects on no mans honestie, for ye witnesses being to him unknown, hee saith hee is deprived of ye benefit of ye law in yt case provided.

And qras ye pltff saith by wch slanders hee is damnified in his good name, trade, reputacon & Credit, to ye value of 100 pounds, ye deft saith much is falselie alledged but not proved, for if ye said ptended words were spoken & ye pltfe slandered, (wch ye deft denies) yet ye said words could not so deeply affect ye pltf in his trade or Credit in so short a time as less yn half a day, ye deft having had his declaraon ye same day as ye words are ptended

to be spoken, yfore as proofe of ye pltffs ptended damage let him prove who of his Crs arrested him, or who refuse to trust him in the time betwixt ye ptended slander & ye deliverie of ye declaraon———. But if it be false yt ye pltff is damnified 100 pounds, as its Impossible it shold be true, yn it will appeare ye pltfe hath malitiouslie and wtout caus vexed ye deft, for ye deft can make it appeare in due time and place yt ye pltff having no busines or Jurisdiction, at Last provinciall court att philad. did falselie, wtout anie cause and provocaon given, Insinuate matters agt ye deft who yn had a triall depending yrfor by endeavouring to render the pson & Caus of ye present deft odious to the yn Judges & Jury, & ye pltf doth still continue his malice by traducing in open Court ye deft, who stands as fair in his reputacon as ye pltffe, to ye greife and scandall of diverse good people both of ye Counties of phila delphia and New Castle———Therefore ye deft beggs to be dismissed from this vexatious sute wth his costs and damages."

What a modern court would do with a paper which at such length combined all the merits of plea, demurrer, and argument, it is perhaps difficult to say. The ancient court without more to do proceeded to the trial of the cause.

Joshua Titterie having been called for the plaintiff and sworn, deposed: "That upon ye sixt day of 3d mo last, being in companie att ye house of Wm.

Frampton, and among other discourse Charles Pickering told ye deft that ye plff should say yt ye deft Wm. Guest was not a good liver, upon which discourse ye sd Guest said yt ye plf was a knave & a rogue & yt hee wold prove it."

John Claypoole deposed "to ye truth of a paper given in to the Court under his hand, viz., philadelphia 7th 3 mo. 1686, Memorandum: This day heard Wm. Guest say yt James Claypoole had but one witness against him, And the sd Guest said yt hee was told that James Claypoole should say he was a person Convicted of ill fame, for wch he said James Claypoole was a rogue & a rascall or else knave, & yt he would make him prove it."

The court having first read the law "Imposing 20 shillings fine upon him yt speaks slightinglie or Caries himself abusivelie to any Magistrate" and also the law "That hee that pretends his Damages to be above 5 pounds, & proves not yt value, shall Loose his actn" committed the issue, declaration, plea, proofs, allegations, and laws to the jury who departed "and after a long time" returned with a verdict for the defendant.

PRESENTMENT OF THE GRAND JURY.[1]

[2d, 4th mo., 1686.]

"philadelphia 2d 4th mo. 1686. The psentments of the Grand Inquest att ye quarter sessions held for town and Countie abovesaid.

[1] MS. Docket.

1. Wee present Sarah Howell for yt on or neer ye 27th of last mo. shee sold Rum to an Indian.

2. The wife of Robert Jeffries for yt some time within the last six mos., by her owne acknowledgment, she mixed Rum with water & sold ye same to some Indians, & widow Kee for selling Rum to ye Indians.

3. John Straten for concealing ye name of one yt sold a bottle of Rum to an Indian.

4. Wee present the want of ye king's road to be Laid out from portquessing to philadelphia.

5. The want of finishing the new bridge & Road from the Town to ye Governor's mill.

6. Wm. Smith for being drunk & so breaking the king's peace.

7. Jeremiah Elfrith, Constable, for refusing to suppress ye sd Smith, tho yrto required by ye high sheriff, about 28th 3d mo. Last.

8. Wee present the encroachments on the king's highways following, vizt: of John Swift's shop on ye end of Mulberrie street neer delaware river, of ye widow Blimston's house being an encroachment standing upon Chestnutt street neer delaware, The porch of Richard Orme encroaching on ye third street, John Markome for setting his house or Cave encroaching upon delaware front street, And John Moone for encroaching on ye front street, by setting his pales upon ye same.

Benjamin Chambers, foreman."

JOHN KING vs. HENRIE PATRICK.[1]

[5th, 5th mo., 1686.]

The 41st court was opened on July 5th, 1686, before Robert Turner, Humphrey Morrey, James Claypoole, Wm. Frampton, John Goodson, and Wm. Salway, Justices, when the above case was called. The defendant being absent, the plaintiff was first attested as to the service, and declared "yt hee —mouslie sumoned ye deft & his attornie (if he anie had) att his house in philadelphia, & by open proclamaon 3 sev'all times upon a mercat day in ye publick & open mercat place, for ye town & Countie of philadelphia where his houses Lands & estate lies, to appear this day by himself, or his attornie to ansr ye complaint of ye plffe as in ye sumons & declaraon, & yt hee left ye copie of his declaraon in his ye defts house." Xtop Sibthorpe and Richard Turner were also attested to prove the service of the declaration. It is interesting to note the practice of serving a copy of the declaration or statement upon the defendant, which seems to have been current in our earliest courts. The plaintiff declared against the defendant "in a plea of debt for yt, ye 25th of July last past, hee loaded on board ye ship Dispatch, ye deft Mr., 2888 foot of mer'table black wallnut boards on ye plfs risque, to be d'd at ye bridge towne in Barbados to his order, value each foot 3 s., 36 pounds 2 s., & for sloope hyre Carying ym on board & mens wages 8 pounds, ye whole 44

[1] MS. Docket.

pounds 2 s., & tho ye deft did safelie arive in Barbados wt his ship & loading, yet hee refuses to deliver ye boards to ye plfs order, of design to defraud ye plff yrof, & of ye produce of ye same, & qrof he hath as yet made no satisfaction, & is yrby in danger to lose his debt, all wch ye plf avers."

The plaintiff then produced the original agreement "qrby the subscribers agreed yt Samuell King shall wt all expedition ship on board Henrie Patrick's ship ye above of wallnut plank, to be delivered in bridge towne at Barbados, (danger of seas excepted) for wch Patrick is to have for freight one third part. Witness or hands 7th June 1685. Said Green subscribes in behalf of Patrick.

Edward Greene
Saml. king

Nota. The pticulars of feet of plank a top of said agreement amounts to 2888 foot."

He also produced the following receipts:

"Recd on board ye dispatch, Henrie Patrick Mr., two hundred sixty nyne plank black wallnut boards of severall sizes upon ye risque & adventure of John King, to be d'd at ye bridge towne in Barbados, ac't agrement being made to deduct each third foot for freight, I say recd 25 July 1685 p order Henry Patrick

Henry Patrick
Edward Greene."

"Recd on board ye dispatch, henry patrick Mr., bound for London, 2 hundred and sixty nyne black wallnut plank, no mark nor number, by me

Robert Wayen."

Tenniss Linch deposed: "yt hee knew a Considerable pcell of plank shipt on pltffs accot upon ye said ship, but knows not ye quantity & yt they were to be d'd in Barbados, & yt ye sd ship arrived yr wt sd plank, & sawe ye plank ashore, & yt ye sd deft refused to deliver ye sd plank to ye pltfs order in ye depo'ts hearing, & sawe him ship part of ye pcell upon another ship."

Nathaniel Puckle deposed: "yt he knew of ye bargain, & yt ye deft refused to deliver ye plank to ye pltffs order in Barbados unles they wold allow him two thirds yrof for ye freight, & knew yt ye plf left an order wt 2 men in Barbados to receive ye plank of ye deft, ye sd deft having sayled out of this river befor people knew of it & wtout signing bill of lading, & knew yt ye sd 2 men offered ye deft securitie, which hee refused to doe, but Caried away ye plank."

After the defendant and his attorney had been again called three times and failed to appear, the court gave judgment for the plaintiff by default for 44 pounds 2 s. with costs "conditionally yt at next court ye pltf prove ye value of ye said planke, & stopt execuon in ye mean time."

In re BABBIDGE.[1]

[5th, 5th mo., 1686.]

Richard Babbidge petitioned the court "to be released from his imprisonment qrto hee was Committed for his abusive speches agt sev'all psons at Xtop Taylor's buriall," and the court upon his submission and acknowledgment of his fault discharged him on payment of his fees.

DISSENTING JUDGES.[2]

[5th, 5th mo., 1686.]

As in all courts, occasions arose when these early custodians of the rights of the community were not entirely unanimous in their views. The following notes of divergence are entered upon the record with frank simplicity:

"An execun being presented by ye clarke (in obedience to ye order of Last Court) agt John Rambo for his fine of 10 pounds ye same was signed by all ye Justices on ye Bench. Another agt John Moon for his fine of 20 pounds, John Goodson ansr was yt hee wold not sign it because hee was not a Justice when it was Imposed, which reason ye Court could not approve or acept of for an Invincible reason yn ofered. James Claypoole also refused to sign it becaus he was for delay of it another Court, yt in ye mean time he might be dealt with, & yn after this reason given he dep'ted the Court. Which delay of Justice ye Court could not approve of & after much entreatie Justice Morrey signed ye same."

[1] MS. Docket. [2] Ibid.

It would appear from these proceedings that it was regarded as essential or at least important, that executions should be signed by all of the judges. The suggestion of dealing with Moon made by Judge Claypoole doubtless meant that in the mean time he could be brought before the Friends Meeting, and thus compelled to perform his duty, this being the technical word used in that form of ecclesiastical polity.

The 42d court was opened 4th of August, 1686, before James Claypoole, Wm. Frampton, Wm. Salway, Humphrey Morrey, and Wm. Warner, Justices.

JOHN KING vs. HENRY PATRICK.[1]

[4th, 6th mo., 1686.]

The plaintiff, who at the last court had obtained a judgment for 44 pounds 2 shillings, conditioned upon his proving the value of the boards, now produced the affidavit of John Richardson, sr., of Kent county, taken before John Briggs, justice of the peace, 28th of 5th mo., 1686, who deposed: "yt hee delivered to Samll King for the use of John King 3338 foot of black wallnut plancke sold to John King at 30 (obscure) p foot," and the affidavit of Samuel King, taken at the same time, who deposed: "yt hee delivered abord Henry Patrick's ship all ye planck hee received of John Richardson upon acot of John King except 26 plancks as was brought back

[1] MS. Docket.

again wch was to ye best of his remembrance 225 foot or yrabouts," and also the affidavit of Wm. Morton, who deposed: "yt hee sayled in Wm. Darvall's sloop with Samuell King from dover river to Little Creeke, and there took in the black wallnut plancke yt John Richardson delivered to Samll King upon the accot of John King & sailed to New Castle & delivered it all on board of henrie patrick's ship except 26 plancke yt was brought back again."

The court then made the judgment absolute and issued execution.

In re PETITION OF ELIZABETH DAY.[1]

[4th, 6th mo., 1686.]

The petition presented to the court set forth that the petitioner "having served her Mr., Griffith Jones 4 years according to Indentures is denied not onlie her freedom but freedom money accdg to ye Law of ye province, & yrfor requests both."

John Busbie and Jeremias Osborne deposed "yt about the 3d instant 4 years agone ye petr and ye deponents being shipmates arrived at Upland in ship Amity, Richard diamond, master."

Griffith Jones "alledged yt she was bound for 5 years and yt on ship board shee consented to it."

The court ordered "the said Griffith Jones to discharge ye petitioner from her Indentures and to pay her according to the custom of the country," with court charges.

[1] MS. Docket.

GRIFFITH JONES vs. CHARLES ASCOM.[1]

[4th, 6th mo., 1686.]

In this case the plaintiff brought suit to recover a balance of moneys alleged to be due on a book account. The defendant, represented by John White, set up that the moneys he had received were paid to him for work done in surveying for the plaintiff some lands in Chester County, and that there was still an amount remaining unpaid. The plaintiff admitted the employment and set forth a readiness to make full payment when the work was completed, but that the defendant had never made a complete return into the Surveyor General's office, and that because of this failure he had been unable to get his patent.

The defendant claimed that he had made a return, but the evidence appeared to show that while he had made such return "he had not executed ye wrant according to its tenor & had not made ye return acording to his Instructions," and that consequently the office had refused the patent to the plaintiff.

The jury found for the defendant, and the court entered judgment. "Therafter ye pltfe craved an appeal from the said judgment to the next prov: Court in equitie, becaus of the severitie of ye Comon law allowing him no Consideracon for ye money paid, which he doubts not but equitie will allow, & yt the work be done for ye money paid, and yrfor is forced to recurr to equitie for reliefe and mitiga-

[1]MS. Docket.

tion of that severitie of ye Comon law." The court granted the appeal "as being above 12 pounds," upon security having been entered.

The 43d court, being a court of quarter sessions, was opened Sept. 1st, 1686, before Humphrey Morrey, John Goodson, Wm. Frampton, James Claypoole, Wm. Salway, and probably two other justices.

BRIDGETT COCK vs. JOHN RAMBO.[1]

[1st, 7th mo., 1686.]

The plaintiff was represented by Charles Pickering and her father, Capt. Cock, and the defendant by David Lloyd, "attorney generall." The declaration alleged that "in ye 12 mo. 1684 the deft did psuade ye pltf to enter into a Contract of matrimonie, & it was on his part concluded yt he wold marie ye pltff & no other woman, qrby she became wt child to him of which she is now delivered, which he refuses to maintain, as also observes not ye former orders of ye Court & wold marie another woman before satisfacn given to the pltfe, qron ye pltfe craves judgmt agt ye deft for 150 pounds damages."

The defendant pleaded: "And ye deft by his attorney, David Lloyd, for plea saith: That ye deft hath ben sued for ye same Caus as now hee is, & judgmt had agt him yron, & execuon yron upon a penall law bond which he hath this Day satisfied in Court, whereupon he is discharged by this Court paying his fees, & yt he is not guiltie since ye sd judgmt &

[1] MS. Docket.

execution, this hee avers & of this hee puteth himselfe upon the Countrie."

To this plea the plaintiff demurred. The court overruled the demurrer "and sustained ye same a good plea." Nevertheless the defendant went further and "denyed that hee had ever made any Contract of marriage wt ye pltf and said he never denyed to maintain the child." The plaintiff, quick to take advantage of this oversight, "in proof of his declaraon yt yr was a Contract of marriage produced ye records of ye former court held ye 4th of October 1685, and the depositions of ye witneses upon ye sd Triall were yn read to the Court and Jurie and ye judgment of ye Court, as also produced a Copie of ye proceeds of ye eccliastall Court held at wiccacoe ye 26th of July 1686 whereby they found I' qust[1] agt ye deft becaus he had defloured & dishonoured ye pltff under pretence of marriage of her, qrby he is bound either to marie her or make her sufficient satisfaction before hee can be married wt anie other woman, & yt ye forbidding ye publicaon of ye pltf's Intentions of marriage with Anneke Venslice[2] by Cap. Cock was just & Law'l."

Upon the issue thus raised the defendant called Lawrence Hyddings, who testified "ye pltffe refused to let ye deft have the child, & to his ofer to maintain it or pay for it, shee anserd it was more yn he was able to doe."

[1] Obscure in MS. [2] Vanderslice?

Wm. Beaven testified: "yt at kingsessing, in andries petersens house, he heard ye deft aske ye pltfe why shee arrested him & yt she anserd he sould see it at Court. Said hee, if it be for maintaining ye child Ill pay for it, & for ye time you had it, & he said he wold nurse it, to which she anserd she wold be ye death of it befor he could have it, so she refused to give him the child becaus he was not able to maintain it."

The plaintiff answered these depositions by saying "yt it was no legall demand of a child, which should have ben by honest men & women & a nurse readie."

The case being committed to the jury, they departed and later returned with this verdict: "philad. 1st Mo. 86 Wee of ye jurie are agreed & doe find for ye pltf with damages & costs of sute. Benj. Whitehead, forman." Judgment and execution followed.

Upon the earlier features of this most interesting case I have heretofore made some comments elsewhere. In its later developments it gives the first instance of a trial in Pennsylvania for breach of promise of marriage, and positive evidence of the fact that an ecclesiastical court once actually sat within the limits of this State and gave a judgment which it was endeavored to enforce. To Weccacoe in the city of Philadelphia must be accorded a unique position in our legal annals.

In re SERVANT.[1]

[1st, 7th mo., 1686.]

"Upon the verbal applicaon of James Harrison to this court concerning a woman servantt, it was ordered yt Cathrin Gilcor aged 26 years sould be ——on record bound to Gov. penn Esqr or his agents for five years as having Come over at sd Go'rs charge wtout Indenture. Shee arryved ye of July last in Capt diamond's shipp."

PHILIP PERCOR vs. ROGER WALDRONDE[2]

[1st, 7th mo., 1686.]

The plaintiff, by Charles Pickering, his attorney, declared against the defendant "in an actn of trover & Conversion on ye case for 10 pounds as ye value and damages for a mare & foale found & Converted by ye deft."

The defendant, by David Lloyd, attorney general, pleaded "yt the mare and foale were his owne & yrfor this actn lies not."

For the plaintiff Allen Foster testified: "yt hee bought ye mare of ye deft for a chain & use of ye mare two days, but left ye chain wt ye deft, & yrafter they went before witneses & bid ym take notice yt ye depo't had bought ye mare for his great chaines, and yt ye deft said it was a bargaine, & yt ye depo't had ye mare in fetters wch becaus of her povertie he pulled of & yrafter she was lost, and ye depo't having told ye pltf yt ye mare was gone he ofered ye depo't

[1] MS. Docket. [2] Ibid.

25 s. for her at a venture wch ye depo't accepted of."

Robert Duffield deposed: "yt ye deft & Allen Foster made a bargain, & repeated it in his hearing, to give him his chaines for his mare and 2 dayes ryding of her, and said Roger said it was no matter for delivering. her, for sd hee you have her in yor possession alreadie. Yn ye mare wandered away & he deposed yt percor was to pay to Allen Foster 35 s. for her & deposed yt he sawe ye deft ryde her afterwards."

John Watts testified: "as ye former witnes wt this addition yt ye deft sold ye said mare to another since."

There is no further record of this case, and what became of it cannot be told.

PRESENTMENT OF THE GRAND JURY.[1]

[10th, 7th mo., 1686.]

"Wee of ye grand jurie for ye towne & Countie of philadelphia 10 of 7ber 1686 doe present as followeth viz:

Wee doe present as an aggrievance ye gate which stoppeth the high way upon ye bridge by ye Govrs mill, it being both troblesome and dangerous

Wee doe also present the burning of lime both in & upon the banke in the towne as being both noisome & dangerous for fyreing houses. Wee doe present James Claypoole Justice of ye peace of philadelphia for endeavoring by an indirect way to preposess Judge

[1] MS. Docket.

More in a Case yt was to be tryed before him in the provinciall Court, being by us lookt upon to be of a dangerous Consequence. Also, when Patrick Robinson was to administer upon the estate of benj. Ecorod, for giving ill Counsell and assuming more power to himselfe yn ye law alloweth of, And for menacing and abusing ye jurors in the triall of John Moon which was an Infringement of ye rights and properties of ye people.

Wee doe further present as an aggrievance yt the former presentments were not presented according to law

thomas h——on foreman.

And yrafter it was desired by ye grand jurie in open Court that these & the former presentments might be delivered to the attorney generall to drawe Indictments yrupon. Nota And a Copie of ye above was given to ye attorney-gnall by ye Clark in open——"

Thus abruptly, the remaining leaves having been torn out and destroyed, terminates this most interesting and valuable record now in the possession of the Historical Society of Pennsylvania.

THE PROPRIETOR vs. GEORGE KEITH, WILLIAM BRADFORD, THOMAS BUDD, and PETER BOSS.

[Dec. 9, 10, and 12, 1692.]

Among the most noted of the early Friends was George Keith, a Scotchman, with a gift of expres-

sion and considerable learning combined with a sufficiency of pride in his attainments and a fondness for contention and dispute. He had borne himself valiantly in the contests with the churches abroad, and during the course of the emigration of the Friends to America he came with them and settled in New Jersey. In 1689 he removed to Philadelphia and took charge of the school at that time established by them. The combativeness which in Europe had found sufficient vent in numerous bitter struggles with the opponents of his sect began soon, in a province where there were no such opponents to be found, to be exhibited in disputes with his associates. He proclaimed that some of his brethren among the Quaker preachers in teaching that the inner light was alone sufficient for salvation were in error, that more was needed than the light within, and that none could be saved without a knowledge of and belief in an outward Christ. Becoming heated in the controversies that ensued, he called Thomas Lloyd, then deputy for Penn, "an impudent man and pitiful Governor," Dirck Op den Graeff, one of the magistrates, "an impudent rascal," and declared that his back had long itched to be whipped, that he would print and expose the Quakers over all America and Europe, and "that there were more damnable heresies and doctrines of devils among the Quakers than among any profession of

protestants." The result was that twenty-eight ministers of the society issued a letter of condemnation of his doctrines, and he, after having been disowned by the yearly meeting at Burlington and the yearly meeting in London, entered into connection with the Church of England. He had sufficient influence to cause a schism among the Friends, and among those who strayed away with him was William Bradford, the pioneer printer in the middle colonies. Bradford learned his trade with Andrew Sowle, the Quaker printer in London, and married the daughter of his employer. He came to Philadelphia bearing with him a letter of recommendation from George Fox, and for many years he had the warm support of the Friends, who needed a printer here, and whose assistance took much the form of a largess, since they agreed, besides giving him all of the business they could throw in his way, to pay him a salary of 40 pounds a year, and to take at least two hundred copies of all books printed by him with the advice of the meeting.

The Body of the Laws adopted at an Assembly held at Chester, 7th of 10th month, 1682, contained the following provisions:[1]

Chap. 28. "That if any person shall speak write or act anything tending to sedition or disturbance of the peace, and be duly convicted thereof, the party so offending shall for every such offence be

[1] Duke of York's Book of Laws.

fined according to the nature and circumstance of the fact, Provided it be not less than twenty shillings.

Chap. 29. "That if any person speak slightingly or carry themselves abusively against any Magistrate or person in office, being duly convicted thereof, shall for every such offence suffer according to the quality of the magistrate and nature of the offence, Always provided it be no less than twenty shillings or ten days imprisonment at hard labor in the House of Correction.

Chap. 30. "That all scandalous and malicious reporters defamers and spreaders of false news, whether against Magistrates or private persons, being duly convicted thereof, shall be accordingly severely punished as enemies to the peace and concord of the Province."

The court of Quarter Sessions sitting upon the 9th, 10th, and 12th days of December, 1692, consisted of Justices Samuel Jennings, Arthur Cook, Samuel Richardson, Robert Ewer, Henry Waddy, Griffith Owen, and John Holmes. In addition to these Robert Turner sat upon the 10th and 11th, and Lasse Cock and Anthony Morris on the 12th of December. All of them were Quakers except John Holmes, a Baptist, and Lasse Cock, a Lutheran. Robert Turner was the only one of the Quakers among them who took sides with Keith in the re-

ligious controversy. On the 9th Peter Boss was called into court and set at the bar.[1] The Grand Jury presented an indictment against him "for that he accused Samuel Jennings, being a Magisterial officer with being an unjust Judge, and of his being drunk, and of laying a wager with John Slocum and for many other scandalous reproachful and malicious expressions to the defaming of him and tending to the disturbance of the peace." The defendant pleaded Not Guilty, and asked to be tried by God and the Country. A jury was called and the defendant was asked whether he objected against any of them. He replied "Yes. I object against all of them that are called Quakers because they are such as I know to be deeply prejudiced against G. K. and all that favour him." The objection was not allowed and the jury were sworn as follows:

"In the Presence of Almighty God and this Court you shall promise well and truly to Try and true Deliverance make betwixt the Honourable William Penn, Proprietor and Governour of the Province, and the Prisoner at the Bar according to Evidence."

The evidence against the defendant consisted of a letter written by him in which he said:

[1] The report of these trials is prepared from a pamphlet written by Keith and published in London, 1693, entitled "The Tryalls of Peter Boss, George Keith, Thomas Budd and William Bradford, Quakers, for Several Great Misdemeanors, as was pretended by their Adversaries, before a Court of Quakers, etc."

"1. Pray let it be queried into whether it was not true that S. J. did wage his Horse with John Slocum, to ride a race with their Horses? and whether J Slocum did not refuse to take the advantage of him because S. J. was Drunk &c?

2. And pray let it be inquired into whether S. J. at another time was not so drunk, could scarce get over the Ship side of Joseph Bryar when at Burlington?

3. And pray let it be inquired whether the said S. J. did not wickedly, in surveying a Tract of Land which Joh. Antrim had actually begun to do?

4. And pray let it be enquired into whether S. J. did not take away the meadow of Richard Matthews, who being in England took the advantage? What the effect will be Time must manifest how Odious he will render others for S. J.'s sake he being a pretty eminent man in London.

5. And pray let it be enquired into the Actions and Abuses of S. J. to John Skeen deceased which should have been answered at Burlington Meeting.

6. And pray let it to be enquired into whether it was S. J. or J. Simcock that was by two persons carried to bed drunk?

7. And pray let it be [further inquired into whether it was the said S. J. or J. Simcock that was so drunk, lost a Coat that was borrowed of another man?"

David Lloyd and John White, for the Proprietor, argued "that letter did defame Sam. Jennings as a Magistrate confirming it——by reading some passages out of some Law books and some Laws of this Province."

Thomas Harris, counsel for the prisoner, admitted the writing of the letter, but argued "what was said therein concerning S. Jennings was not against him as he was a Magistrate, nor could be reckoned a Defamation, because twas only a private Letter sent to himself, showing his dislike in some things, and desiring him to clear himself of other gross and scandalous things that were reported of him, as is usual for one church member to do to another."

George Keith then asked for permission to speak. It was objected by counsel that he was not "rectus in curia." The court gave him permission and he said: "That a distinction must needs be allowed of words spoke to a Man as he is only in a private Capacity and as he is a Magistrate," and further "that Peter Boss being a member of the Quaker's church they ought not to go to Law with him until they had proceeded orderly with him in their mens meetings and given him Gospel Order; for the things of difference betwixt him and Sam. Jennings relate wholly to Church Discipline and belong to a Spiritual Court and not to this."

David Lloyd: "This is a spiritual Court for in England they can try Atheism in this court."

George Keith: "But Peter Boss is not accused of Atheism and if a man profess one Almighty God this Court has nothing to do with him for his Opinions or Perswasions in Religious matters."

Then David Lloyd read a passage out of a Law Book "that certain words spoke against a Bishop or Minister were actionable tho' not actionable against a private person; which (said he) is the present case."

The defendant produced "the Testimonies of several credible Persons concerning the matters contained in the said Letter and prest hard to have them read because they proved some of the things queried at least."

This, it will be observed, was a distinct offer to prove the truth of the statements contained in the alleged defamatory paper, or libel. The position taken by this early Pennsylvania Quaker court upon that important question is, in a legal sense, of the greatest interest. We are told in the report of the case made by Keith, our only source of information, and which was written by him and printed by Bradford in an effort to prove that the New England spirit of persecution had been exhibited toward them in Pennsylvania that they, the court, "were very unwilling to have them read, saying it was on

evidence unless the persons were present in Court."

In other words, they raised the objection not that the evidence was inadmissible, but that the witnesses ought to be produced in person. It was urged on the part of the defendant that "Attestations in writing had been often accepted in this Court," and that at the former sessions his witnesses were waiting in court, "which was great Charge to him but by reason of the Extremity of the Weather could not be present now." They then permitted some of the papers to be read, deciding in effect that the truth of the allegations might be given in evidence.[1] The testimony was the merest hearsay.

The affidavit of Mary Budd was to the effect "That about three Years now past Sarah Biddle, Wife of W. Biddle senior, she being at Burlington did tell it to me thus, as followeth, That she reproving her Son William, who had been riding hard, his answer was Why Mother may not I so well as Sam Jennings, he could ride a Race, or did ride one, with John Slocum."

The affidavit of William Bustill set forth that "Will. Biddle, sen. did tell me that S. Jenings and J. Slocum did ride a Race together and that John did win S. Jenings horse."

[1] Samuel Jennings says in his "State of the Case," London, 1694: "I made it my request to the court that they would suffer him to read all that he had, and make the most of it; for proof of any or all his charge." p. 66.

There were other unattested statements concerning matters not referred to in the letter in question. The jury found the defendant guilty "of Transgressing the 29th chapter of the Laws of this Province viz: Against speaking slightingly of a Magistrate," and he was thereupon fined six pounds.

George Keith was then called into court and set at the bar and the crier called "O Yes, Silence is commanded upon pain of imprisonment." The grand jury presented George Keith and Thomas Budd "as authors of a Book entituled, THE PLEA OF THE INNOCENT, where in p. 13 about the latter end of the same they the said Geo. Keith and Tho. Budd defamingly accuse Sam. Jenings (he being a Judge and Magistrate of this Province) of being too high and imperious in Worldly Courts, calling him an Ignorant Presumptuous and Insolent man, greatly exposing his Reputation and of an ill President and contrary to the Law in that case made and provided."

Upon being asked to plead, Keith requested permission to be heard, which was granted by the court. He abused the privilege by proceeding to threaten them with the condemnation of Europe, saying: "I would have you to consider that both ye and we are as a Beacon set on a Hill and the Eye of God Angels and Men are upon us; and if ye do anything against us that is not fair and just,

not only these parts hereaway will hear of it, but Europe also; for if we be wronged (if God permit) we think to make it known to the World." He then inquired in what capacity David Lloyd appeared in court against them, since he was not the King's Attorney, and the following colloquy occurred:

"David Lloyd. We have no King's Attorney.

G. K. I understand that Patrick Robinson is the King's Attorney.

D. Lloyd. No, he is not.

G. K. But he is Attorney General.

D. L. He is neither King's Attorney nor Attorney General.

G. K. What is he then?

D. Lloyd. He is the Proprietary's Attorney.

Now G. K. still pressing to know in what Capacity D. Lloyd did plead it was answered, That the Court allowed him to plead."

After further protesting that two of his Judges, Samuel Jennings and Arthur Cook, were prejudiced against him, and certainly any participation by Jennings in the trial would not be in accordance with propriety nor perhaps with right, he was required to plead.[1] He said that he was acting under the advice of able counsel and that his only plea was "that I

[1] "But they say I was upon the Bench when they were fined, which is also a mistake, for though I were there when the judgment of Court was delivered, yet I neither delivered it nor was I concerned in agreeing what it should be, but as is usual in such cases, the Justices consult and agree that in their Chamber, and order it to be delivered by the Clerk in writing at the close of the Court."—*Jennings' State of the Case. p. 57.*

am not presentable by the Grand Jury for anything alledged against me, they being no Offences against the King Governour nor Country; what I have said was only against particular Persons who if they think themselves wronged by me may Sue me in their own Names and I am ready to answer them." Upon being urged to come to trial and having replied that he would make no other plea, the clerk told him "If ye refuse to be tryed by the Jury the Bench has power to fine you," to which he responded:

"I shall take my hazard of that."[2]

He further argued with considerable force: "They were not spoke to him as a Magistrate, nor when he was in the exercise of his Office; and to call him High and Imperious doth not reflect on him as a Magistrate. If I had called him Ignorant in the laws and Unjust in the execution of them, this would have reflected on him as a Magistrate, but not to call him High and Imperious; for Piety, whereof Humility is a Branch, is no essential Qualification of a Magistrate, tho' it be of a Christian and Minister of Christ."

Since he refused to plead, Lloyd bade the clerk to record him "Nihil dicit." He persisted in having the last word, however, and pertly said: "Why

[2] Within three months of this time Giles Corey was pressed to death in Massachusetts by the *peine forte et dure* for refusing to plead to a charge of witchcraft.

should he Record me nihil dicit? I think I have said a great deal."

Thomas Budd was then set at the bar, and the presentment was read to him. He was more tractable and pleaded: "Not Guilty as there presented but own myself to be one of the authors of that Book called The Plea of the Innocent." He demanded a trial by the country. A jury was called and he was asked whether he had any exceptions to make against any of them. He objected to all who were Quakers, but was told that his exception was too general. He then said: "I except particularly against Rich. Walters because he signed the paper of the 28 against us (which this Book was an Answer to) and against James Fox, because he signed a Paper in the Quarterly against us, and I except against Joseph Kirle and John Whitpane, because they have spoke against G. K. and me and justified these Presentments against us." The exceptions were not allowed, the jury went forth, and returned the next morning with a verdict "that Thomas Budd was guilty of saying Samuel Jennings had behaved himself too high and imperiously in Worldly Courts."

It was at once urged by Keith and Budd "that it was no Verdict not being found to be a Breach of any Law." The court gave judgment, fined each of them five pounds, and refused appeals to the

Provincial Court and to the King and Queen and Council in England.

Some time before the twenty eight Quaker preachers had issued their testimony against George Keith, to which reference has been heretofore made, a river pirate, named Babbitt, had stolen a sloop from a wharf and made his escape. Three of the magistrates, all of whom were Quakers and one of whom was a preacher, gave a warrant in the nature of a hue and cry, and acting under it a party of men went in a boat in pursuit of the robbers and finally succeeded in overtaking them and capturing the sloop.

As this party was about to embark, Samuel Carpenter, a prominent and wealthy Friend, stood upon a wharf and promised them one hundred pounds in the event of success. It is altogether probable that they used some force. This affair gave Keith the opportunity for an attack, of which he was not slow to take advantage, and he wrote a paper, printed by William Bradford without an imprint, called "An Appeal from the Twenty eight Judges to the Spirit of Truth and true Judgment in all faithful Friends called Quakers that meet at this yearly meeting at Burlington, 7 mo. '92," in which, after discussing at length the points of theological difference, he put these more or less offensive queries:

"9. Whether the said 28 persons had not done much better to have passed Judgement against some of their Brethren at Philadelphia (some of themselves being deeply guilty) for countenancing and allowing some called Quakers, and owning them in so doing, to hire men to fight, (and giving them a Commission so to do, signed by three Justices of the Peace called Quakers, one whereof being a Preacher among them) as accordingly they did, and recovered a Sloop, and took some Privateers by force of arms?

"10. Whether hiring men thus to fight, and also to provide the Indians with Powder and Lead to fight against other Indians, is not a manifest Transgression of our principle against the use of the carnal Sword and other carnal Weapons? Whether these called Quakers in their so doing have not greatly weakened the Testimony of Friends in England, Barbadoes, &c., who have suffered much for their refusing to contribute to uphold the Militia, or any Military force? And whether is not their Practice here an evil President, if any change of government happen in this place, to bring suffering on faithful friends, that for Conscience sake refuse to contribute to the Militia? And how can they justly refuse to do that under another's Government, which they have done or allowed to be done under their own? But in these and other things we stand

up Witnesses against them, with all faithful Friends everywhere.

"11. Whether it be according to the Gospel that Ministers should pass sentence of Death on Malefactors, as some pretedned Ministers here have done, preaching one day Not to take an Eye for an Eye (Matt. v. 38), and another day to contradict it by taking life?

"12. Whether there is an Example or President for it in Scripture or all Christendom, that Ministers should engross the worldly Government, as they do here? which hath proved of a very evil tendency."

Thereupon two of the Judges, Samuel Richardson and Robert Ewer, issued a warrant for the arrest of Bradford upon the ground that the publication was an attack upon the magistrates, was malicious and seditious in character, and in violation of 14 Car. 2., cap. 33, which forbade the printing of books without the name of the printer appearing upon them. In obedience to the warrant the sheriff seized the unused copies of the Appeal, took possession of the form on which it had been printed, and brought Bradford before the Judges. He refused to give bail and was committed for trial by the Judges Arthur Cook, Samuel Jennings, Samuel Richardson, Humphrey Morrey and Robert Ewer. This commitment, though it called forth bitter denunciations in the pamphlets

printed by his supporters at the time, which have been echoed at later periods, was the ordinary and necessary result of the failure to furnish bail for a hearing. His case was called for trial, the last of the four, on the 10th of December. The grand jury presented the 9, 10, 11 and 12th articles of the Appeal for being of a tendency to weaken the hands of the Magistrates and William Bradford "for printing of the said seditious paper." Bradford then said that the Mittimus differed from the presentment and "I desire to know whether I am clear of the Mittimus." He was informed that the determination of the issue upon the presentment would clear him of the mittimus. He then "desired to know what law that presentment was grounded on."

"D. Lloyd. It is grounded both on Statute and Common Law.

"W. B. Pray let me see that Statute and Common Law else how shall I make my plea? Justice Cook told us last Court that one reason why ye deferred our trial then was that we might have time to prepare ourselves to answer it; but ye never let me have a Copy of my Presentment nor will ye now let me know what law ye prosecute me upon.

"D. Lloyd and J. White. It's not usual to insert in indictments against what statute the Offence is when it's against several Statutes and Laws made, and if thou wilt not plead Guilty or Not Guilty thou

wilt lose thy opportunity of being tried by thy Country." They then asked the clerk to write down that he refused to plead. He asked "that they would not take that advantage against him for he refused not to plead, but only requested that which was greatly necessary in order to his making his own Defence." The following jury were then called: Humphrey Waterman, Joseph Kirle, James Fox, Samuel Holt, Thomas Wharton, Thomas Marle, Nicholas Rideout, John Whitpane, Richard Sutton, Richard Walter, Thomas Morris and Abraham Hardiman. Before they were attested he was asked if he had any exceptions to make against any of those returned.

"W. Bradford. Yes, I have, and particularly against two of them (and which exceptions I think are rational) and that is against Jos. Kirle and James Fox; for at the time when I was committed to Prison, Arthur Cook told me that Joseph Kirle had said That if the proceedings of the Magistrates was thus found fault with, that they must not defend themselves against Thieves and Robbers, Merchants would be discouraged from coming here with their vessels etc. And I except also against James Fox because on the first day after Babit and his Company were taken, I being at Sam Carpenter's there was Governor Lloyd, James Fox, and several others, and in discourse concerning taking of the said Priva-

teers, James Fox greatly blamed W. Walker because he found fault with some Justices that were Quakers commanding men and, as it were, pressing them to go against the said Privateers. And also James Fox joined with Tho. Lloyd in saying He would mark them as Enemies to the Government and well-being of the Province, who were neutral in the case of going against Babit, etc. By which Instances I think it appears that these two persons have prejudged the cause that is now to come before them."

These objections were overruled. Lloyd then contended that all the jury were to find was whether or not Bradford printed the paper.

"W. B. That is not only what they are to find, they are to find also whether this be a Seditious Paper or not and whether it does not tend to the weakening of the hands of the Magistrate."

Lloyd met this momentous proposition by saying: "Yea, that is matter of Law which the jury are not to meddle with, but find whether W. B. printed it or no, and the Bench is to judge whether it be a Seditious Paper or not; for the Law has determined what is a Breach of the Peace, and the Penalty, which the Bench only is to give judgment on."

Some of the jury also "desired to know what they were to be attested to try for they did believe in their Consciences they were obliged to try whether that Paper was Seditious, as well as whether

Will. Bradford printed it." Here was presented for determination a novel question, and one of the gravest consequence, not only in its legal aspects but in its effect upon the liberty of the press in America and throughout the world. There is nothing especially remarkable or meritorious in the fact that Bradford raised it. From long before that time down to the present, persons charged with offences have always been ready enough to make any suggestions, no matter how startling, which may peradventure tell in their favor. Upon the court rested the responsibility of ruling upon the question and it is needless to elaborate to you, gentlemen of the bar, how much depended upon their decision. We shall presently see how these Quaker Judges engaged in trying a man who had bitterly offended them, who had participated in ridiculing their most cherished tenets, who had given publicity to an attack none the less painful because of the difficulty of reconciling the principle of non-resistance with the fact of issuing a warrant for the capture of privateers, and who doubtless in their view combined apostacy with ingratitude, met the responsibility thus imposed upon them.

David Lloyd argued, "Ist, That not any men were hired to fight, but only to fetch back the sloop; 2ndly, That there was no Commission given, but only a Hue-and-Cry, or Warrant, as might be in any other ordinary case, and what was done was in case of

great necessity when a Company of Rogues had Pyratically stolen away a Sloop to the great terror of the People of this place; and if the Magistrates must be blamed for their proceedings herein, what do you think will be the consequence thereof but to encourage all manner of wickedness? And Will. Bradford is presented for printing and publishing this Seditious Paper, whereof you of the Jury are to find him guilty if it appear to you that he printed it," and further, "How that the printed Appeal was a Seditious Paper, and tended to weaken the Hands of the Magistrates, and encourage all manner of wickedness; and that it was evident W. Bradford printed it, he being the printer in this place, and the frame on which it was printed was found in his House."

Bradford argued: "I desire you of the Jury and all here present to take notice that what is here contained in this Paper is not Seditious, but wholly relating to a Religious Difference and asserting the Quaker's Ancient Principles, and is not laid down positive that they ought not to have proceeded against the Privateers, but laid down by way of Query for the People called Quakers to consider and resolve at their Yearly Meeting, whether it was not a Transgression of the Quakers Principles to hire and Commissionate men to fight," and again, "I desire you to take notice that here is not one Evidence been brought to prove that I printed the Sheet called an

Appeal. And whereas they say the Frame is Evidence, which the Jury shall have; I say the Jury ought not to hear or have any Evidence whatsoever but in the Presence of the Judge and the Prisoner."

Samuel Jennings for the court instructed the Jury what they were to do: "To find 1st, whether or not that Paper called The Appeal had not a tendency to the weakening the Hands of the Magistrates and encouragement of Wickedness?

2dly, Whether it did not tend to the Disturbance of the Peace?

And 3dly, Whether William Bradford did not print it without putting his Name to it as the Law requires?"

For the first time it is believed in the history of English jurisprudence a court of competent jurisdiction left to the jury the question of the determination of the seditious character of an alleged libellous paper. The modern doctrine of the liberty of the Press was established not in the trial of John Peter Zenger in New York, but in the trial of William Bradford in Pennsylvania, and the encomiums which have been bestowed upon Andrew Hamilton the lawyer, must be given with stronger emphasis to Samuel Jennings and his colleagues, the Quaker Judges. To them may well be applied the eloquent language used by David Paul Brown in the Forum, and there, to some extent at least, wasted upon Bradford.

"We have, therefore, in this trial, evidence of the fact, interesting to the whole press of America, and especially interesting to the Bar and the Press of Pennsylvania, that on the soil of Pennsylvania," her judges maintained, "in 1692, with a precision not since surpassed, a principle in the law of libel hardly then conceived anywhere, but which now protects every publication in this State and in much of our union; a principle which English judges after the struggles of the great Whig Chief Justice and Chancellor Lord Camden, through his whole career, and of the brilliant declaimer Mr. Erskine were unable to reach; and which at a later day became finally established in England only by the enactment of Mr. Fox's libel bill in Parliament itself."

The jury had a room provided for them, and after they had been together for a quarter of an hour the sheriff caused the frame to be carried in to them as evidence that the Appeal had been printed by Bradford.

"The jury continued about forty-eight hours together and could not agree. Then they came into Court to ask a Question, viz.: Whether the Law did require two Evidences to find a man guilty? To answer which D. Lloyd read a passage out of a Law Book, That they were to find it by Evidences or on their own knowledge, or otherwise. Now, (says D. Lloyd) this otherwise is the Frame which you have, which is evidence sufficient.

"W. Bradford. The Frame which they have is no evidence, for I have not seen it, and how do I or the Jury know that that which was carried in to them is mine."

The Jury were sent out again and the officer was directed to keep them without meat, drink, fire or tobacco. They returned in the afternoon, and being unable to agree were discharged by the court.

The romantic story intended to reflect upon the court, first told in a New York newspaper so late as 1849, elaborated and colored by Mr. Brown in the Forum, accepted by Mr. John Wm. Wallace in his Address upon William Bradford and by Mr. Hildeburn in his Issues of the Press in Pennsylvania, to the effect that when the form was carried into the Jury one of them touched it inadvertently with his cane, the letters fell into a mass of *pi*, the evidence disappeared, and the prosecution consequently failed, is utterly without foundation in fact. Keith, in his report of the trial, written and printed at the time, says nothing at all about it, and makes other statements which show that it could not be true.

After they had been out for forty-eight hours, it appears from what was said by both Lloyd and Bradford they still had the frame, and surely that was ample time for them to get all the light it could give them. The reasons for the disagreement of the jury are also plainly and affirmatively set forth. "Some

of the said Jurors called Quakers have told that these three persons stood upon the Nicety (as they, called it) of Evidence that W. B. printed that Paper, whereas the other Jurors, called Quakers, said they believed that W. B. printed it and that it was a seditious Paper, &c., and they would not acquit him."

Cap. 36 of the Body of the Laws provided that "there shall be Two credible witnesses in all Cases in order to judgment." It is evident that some of the jury had this provision in mind when they came into court and inquired whether "Two Evidences" were not necessary for conviction. Lloyd contended that other circumstances were sufficient, and he relied upon the presence of the form from which the paper had been printed, and which undoubtedly belonged to Bradford the only printer in the town. He failed to convince this part of the jury.

When Andrew Hamilton came to Philadelphia in the beginning of the last century (he was here in 1713) the recollection of this controversy, which stirred the whole community, must have been still vivid and the pamphlets it called forth must have been still numerous.

As a lawyer and a man active in affairs he doubtless became familiar with the subject, and we are bound to presume that when he went to New York in 1735 to participate in the trial of Zenger he knew that in the Pennsylvania court in the

trial of Peter Boss evidence of the truth of the alleged libellous statements had been offered and admitted, and that in the trial of Bradford it had been left to the jury to find whether or not the printed paper was seditious. The report made by Keith of these trials was reprinted in London in 1693, and the trial of Zenger was reproduced many times in America and England, and becoming widely known, was incorporated among the State Trials. The influence of the wide and public discussion of the Zenger trial is said by good authority to have been considerable in bringing about the passage of Fox's Libel Act, and it may well therefore be claimed that these Pennsylvania Judges set a note which has been heard over the world and rendered decisions producing consequences of the utmost importance.[1]

RICHARD HEATHER, DEMISE OF JOHN HENRY SPROGEL vs. THE FRANKFORT COMPANY.

[Jan. 13th, 1708.]

This case, though it came before the court at a time later than the period covered by the present paper, had its inception in events occurring almost at the beginning of the settlement. It is a case about which

[1] So late as 1800, in the trial of Thomas Cooper, William Rawle, in commenting on the United States statute of 1794, said: "In the act which defines this offence and points ont the pnnishment a liberality of defence is given unknown, I believe, in any other country where the party is tried for a libel on the Government. Here the defendant is allowed, under the third section of that act, to give in evidence the truth of the matters charged as a llbel in the publications, and the jury have a right to determine the law and the fact under the direction of the Court."

there has been much comment in our legal annals and the recent discovery of a series of original papers relating to it, in the hand writing of Francis Daniel Pastorius, makes it possible to give all of its details from the standpoint of one of the participants. The most extensive single purchase of lands from William Penn was that which subsequently resulted in the settlement of Germantown and the formation of the Frankfort Company. On the 2d of April 1683, Jacobus Van de Walle, Johann Wilhelm Petersen and his wife Johanna Eleonora Van Merlau, Daniel Behagel, Johan Jacob Schutz and Caspar Merian, all of them people of learning and some of celebrity in Germany, who had made arrangements for the purchase of fifteen thousand acres of land in Pennsylvania, afterward increased to twenty-five thousand acres, with the intention of coming over within a year to found a settlement here, gave a power of attorney to Francis Daniel Pastorius authorizing him in the meanwhile to represent their interests. This power of attorney was as follows:

"At all times and in all things the Lord be praised:

When as Francis Daniel Pastorius, U. J. Licent'us, a German of Winsheim in Franckenland, did signify his Inclination to travel towards Pennsylvania, viz., that Province in America which heretofore was called New Netherland, Jacob van de Wallen of Franc-

fort, Merchant, for himself and as attorney of John Wilhelm Petersen, of Lubeck, and of his wife Johanna Eleonora van Merlau, as also Johann Jacob Schutz, of Francfort, U. J. Licent'us, and Daniel Behagel and Caspar Merian of Francfort, Merchants, have trusted and Comited unto him the care & Administration of all their Estate, lands and Rights which they lawfully obtained there of William Penn, Governr in that part, So that the said Pastorius, in the Name of the Constituents, shall receive and Conserve in the best form of Law the things themselves, the Possession thereof and other rights: Order the tillage of the ground and what belongs to husbandry there according to his best diligence, hire Labourers, grant part of the land to others, take the yearly Revenues or Rents; and shall and may do all what the Owners may do in administration, nevertheless all sorts of alienation and mortgaging excepted.

To this end a certain Sum of money has been delivered to his trusty hands: Of all which he shall and will yearly give an account to the Constituents or their Heirs; but the Constituents will not be obliged to any man by all his doings and Contracts: What will be reasonable shall be assigned unto him out of the expected Incomes or Rents in Pennsylvania.

This being thus done hath been subscribed by the Parties own hands, Confirmed by Publick au-

thority and Committed to divine blessing in Francfort on Mayn, a free city of the German Empire, in the year of Christ, according to vulgar account 1683, the 2d day of the 2d month commonly called April.

Jacobus Van de Walle,
for myself, and as attorney of John Wm. Peterson and his wife Eleonora van Merlau.
Daniel Behagel.
John Jacob Schutz.
Caspar Merian.
Francis Daniel Pastorius.

That the aforesaid Parties did agree to all the above Contents and in my presence sign and acknowledge the same, I do hereby witness the Date as above mentioned.

Christian Fenda,
Imperial approved and matriculated Publick Notary here, manu and Sigillo." [1]

Another power of attorney was given to Pastorius dated May 5th, 1683, which though not extant was probably of the same purport, executed by George Strauss, Abraham Hasevoet and Jan Laurens, other persons then interested in the purchase. On the 11th of July 1683, Johan Wilhelm Uberfeld, who had become interested, sold his one thousand acres to Pastorius. The latter, who the same year came

[1] Pastorius MSS.

to Germantown and laid out the town, wrote on the 14th day of November 1685 to Van de Walle Schutz, Behagel and Petersen "that in case they would not free me of my promise in their Letter of Attorney, viz., to be accountable to the Constituents and their Heirs I was not at all able or willing so to do, but must lay down mine administration; for as much as they in like manner promised me to follow me to this Province the next ensuing year after my departure out of Germany, the which was not performed by them; Wherefore I expect an answer from them all whether they would release unto me the sd mine Obligation or not." [1]

To this request Schutz with the approval of Petersen and wife, Van de Walle and Behagel, wrote June 30, 1686:

"Dear Brother: We thank God for thy joyful Recovery and Preservation of all the rest; Putting in so much no distrust at all in thy Fidelity and Diligence that we, especially I for mine own person, do approve thine accounts unseen: Nevertheless in case it is not against thee, only for a nearer advice sake to send such accounts over: at least to make no ill Precedent to any future successor whom perhaps we dare not so fully trust without all care: It will be very pleasing to, and not against us, to approve them in optima forma."

[1] Pastorius MSS.

RICHARD HEATHER, DEMISE OF JOHN HENRY SPROGEL vs. THE FRANKFORT COMPANY.

By agreement dated November 12th, 1686, the Frankfort Land Company was formed. At this time the owners were:

	Acres.
Jacob Van de Wallen	2500
Caspar Merian, now Jacob Van de Wallen	833 1-3
Daniel Behagel.	1666 2-3
Johan Jacob Schutz	4000
Johan Wilhelm Uberfeld now Francis Daniel Pastorius . .	1000
Jacob Van de Wallen	1666 2-3
George Strauss, now Johanna Eleonora van Merlau, wife of Johan Wm. Petersen	1666 2-3
Daniel Behagel	1666 2-3
D. Gerhard von Mastricht . . .	1666 2-3
D. Thomas von Wylich . . .	1666 2-3
Johannes Le Brun	1666 2-3
Balthasar Jawert	3333 1-3
Johannes Kemler	1666 2-3

This agreement provided for the organization and government of the company as follows:

"The above said lands, wherever they are or hereafter shall be Assign'd Jointly and asunder, as also the Lots in the City, which over and above the afore-

mentioned belong unto us, to-wit, four or six places in the City of Philadelphia, for to build new houses upon, and a matter of 300 Acres in the Cities Liberty Situate before and about Philadelphia; And the land, which of late hath been bought upon the Skulkill for a Brick-kiln, together with all and every Edifices and other Improvements, which now are and hereafter in any place and quarter of all Pensilvania, as also Victuals, Commodities, Cattle, household stuff and which we have sent thither, or bought or otherwise acquired there; and the present and future Real Rights and Privileges shall now and hereafter be and remain Comon in Equal Right according to Every One's above specified Share which he hath in the said Company.

2. All and every Expenses for the Cultivating, Improvement and Buildings; Item for transporting of Servants, Tenants and other persons, as also Commodities, Victuals, tools, &c., and there in the sd Province for Tradesmen & labourers, &c., and universally all Charges of what Name soever, which hitherto have been spent in America and Europe, or hereafter at the next mentioned manner may be spent, shall be at Comon Costs after the rate of Every Ones Share.

3. Per Contra all Profits, Revenues and whatsoever there is got, built, planted, tilled and brought forth, either in products of the Ground, Slaves, Cattle, manufactures, &c., nothing at all Excepted,

shall be Comon among all the Partners pro rata of the number of Acres.

4. Concerning the Affairs of this Company, the five head-stems, every 5000 to be accounted for a head-stem, or as hereafter it may be otherwise Agreed upon, shall Consult among themselves, and by the plurality of Votes (each thousand Acres having ten votes), conclude with all Convenient Speed.

5. There in the s'd Province there shall be always an Attorney for the Company, and in case of his decease, Absence & Unableness a Substitute be appointed unto him with a Salary in writing Executed by both Parties. Both these shall yearly, under both their hands and the Company's Seal, make an Orderly Inventory of all the Companies effects there, Specifying the Cultivated and uncultivated Acres, meadows, waters, woods, houses, the bounds thereof, as also the Servants, Tenants, Cattel, fruits, Victuals, Comodities, debts Active and Passive, ready money, etc., and send the same over with their Accounts of Costs & Profits, Receipt & Disbursement, Decrease and Increase in all particulars, by one and another following Vessel with a second Original, and likewise in manner aforesaid Communicate the State of things to him, unto whom at that time the Correspondency of the Company shall be Committed.

6. Here in these parts there shall be always Ordained by the plurality of Votes in Writing two Clerks of the Company, either of the Companions or Strangers, who shall attend the Companies Accounts & Correspondency in America; Open the letters which belong to them and Communicate the Contents thereof by way of Extract, or if need be a Copy to the head-Stems, by and from whom further all and every Partners are to receive, do & perform theirs, write down with short words yet Clearly & diligently in a Diary of the Pennsilvanian affairs out of the letters coming from thence or the Occurrencies happening here; make peculiar memorandums of what is to be done & Observed; Adjust every year ultimo Decembris the Accounts, together with the Revision of Inventories, and the Annotation of Increase & Decrease by Day and Date, as far as may be had by Letters or otherwise, and being approved of by the five head-Stems or their Attornies, Record them in a Book, and keep them under two Locks in good Order according to their Table or Index, together with the Companies Documents and Original Writings, ascribing Day & Date, as also the Copies of the Letters which they send away in a Certain Place as the Company Pleaseth, and now for the present time at Francfort upon the Mayn, where this work did first begin, and whereunto as yet the

greatest part doth belong, and in all without the special consent of the five head-Stems not undertake or dispatch anything of Importance. Further they shall enjoy for all their labour some moderate Recompense from the Company: Moreover each head-Stem may for himself & the Partners thereunto belonging extract out of such letters what he pleaseth; but the Originals shall be kept in the Archives.

7. Hereafter the Company shall sign their letters & Contracts with a peculiar Seal to be kept along with the aforesd Original Documents; and shall send another Seal somewhat different in Bigness & Circumscription to their factors in Pennsilvania there to make the like use thereof. Without such Seal no Letters or Contracts shall be sent in the Companies Name thither or hither, nor be esteemed firm & good.

8. In case any of us, or of our heirs, should go to Pensilvania, or send an Attorney for himself aforehand to prepare him a Settlement and would give him or take along with himself, several proper things for his use, he or they may do the same at their own Costs and Riske; Afterwards, after the rate of his share for every thousand Acres, chuse for himself Sixty in one tract of uncleared land, So as we received the same of the Governr. And therefor he shall pay yearly a Recognition as Rent to the Company for every ten

Acres One English Shilling: And if this land be not enough, but too narrow for him, there shall be further allowed unto him, proportionately to his share, 60 acres as aforesaid in consideration of each thousand for the Moiety of the Price for wch the Company useth to Let at that time upon Rent unto Strangers; And in case he should still desire more land, if the Company can spare it, at the price & on such Conditions as to a Stranger. Now upon these lands which one or the other settleth for himself alone in manner aforesd, he may act at his pleasure, and use & enjoy all sort of goods immoveable & moveable which we have in Comon there before other Strangers, Nevertheless that all this be unprejudicial to the Comon best of the Company. And those Companions which dwell in Pennsilvania shall pay the usual Rent, Wages, Payment, or Value, of all what they use of the Comon things for themselves to the Companies Factor there, whereof they are at the following Repartition to receive back their share. But if the whole Company do generally find good to let go over any of their Companions for their Comon Service and at their Comon Costs, there shall in that case be made a particular Agreement. But in every Case in all parts whatsoever the Companions there & their heirs shall be Obliged no less than those in Europe to stand to this Contract and to the further orders of the most votes.

9. If the Clerks or else one or more by the Companies approbation as aforesaid should disburse money, such debtors shall be obliged to repay the thus disbursed principal Sum at the utmost within the space of one year with the Yearly Interest of five per Cent, and therefor their share shall hereby in the best form of Law be engaged as a Special Pledge.

10. If any of us or Ours soon or late shall Dye without wife & heir begotten in matrimony of his body, not having expressly & particularly declared by Testament, or other credible Disposition in Writing, or by word of mouth, what he would have done with his share of these Comon goods after his decease, his share shall accrue and be herewith assignd to the whole Company proportionably to each respective share, and shall not be otherwise accounted than as if he had reserved to himself only the use of such goods for the term of his life, and presently in the beginning Incorporated the true Property to the Company. And all deceases of the Companions, and who are their heirs in this work, shall by the Clerks then being in credible form either under the attestation of all the nearest relations of the Deceased, or of other credible persons be advised with all speed, Or until the Certainty thereof the Name of the Deceased be continued in Accounts & Books, And his Contingent wc'h falls to him be kept in the Companies Case along with the Original Documents.

11. It's not lawful for any that is a Partner in this Company to alien his land or right thereof, all or in part, to any without the Company, unless he have the Companies Consent, or at least made the first Offer to the same; But if one or other of us, our Wives, Children or whoever shall be hereafter a Partner of the Company, should be willing soon or late to alienate his Share or Portion, and none of the Company to Acquire or buy the same, then and not otherwise the Seller shall have liberty to sell it to any other; yet with this Proviso, that always the Company, or if they will not have it, any of the Company, within three months after the Alienation is made known, shall have liberty to take to themselves that what is sold, paying down the consideration money, and for their profit to deduct or give less than such new Purchaser bought the part alien'd for Ten per Cent of the Consideration Money, the Price whereof both Seller & Buyer shall be obliged to declare upon their Conscience.

11. In Case, which we do not expect, be it soon or late, there should happen any misunderstanding or Cause of Contention between us, Our Heirs & Successors, Concerning these Goods & what thereon doth depend, the same shall be determined among the members of the Company, Or if both parties do not account them wholly Impartial by other than two honest Persons unanimously Chosen by the

differing parties, And these two Chosen Persons shall have power to take unto them the third, if they think it necessary, in form & manner hereafter described, vizt. the chosen Arbitrators on an appointed day & place, in the presence of the differing parties or their Attornies, after the Invocation of Divine Assistance and ripe Consideration of the matter, shall determine the business by their award according to their best knowledge & Sentiment, in case they cannot bring the parties to a Composition; But if these three cannot agree, or find out the most votes, they shall send for advice to one or two of the head-Partners, and then Conceive and pronounce their Award; To the Contrary whereof afterwards in no manner or ways any thing shall be done, acted or admitted by Right or Force of no Judge or Man in the whole world in Europe or America; And if any should presume to oppose himself hereunto, eo ipso for by so doing, he shall forfeit his whole share and besides pay a fine of 200 rix Dollars to the publick Almonery (or to the poor) ipso facto without any exception or further declaration.

All faithfully & without Covin. In true witness this present Contract, to which all Partners after a ripe Consideration did unanimously Consent, is twelve times under all & every ones own hand & Seal set forth, and an Exemplar thereof delivered to each, and one laid up with the Comon Documents.

Given at Francfort upon Mayn the 12th November Anno 1686."[1]

Pastorius, though with apparent reluctance, continued as the agent of the company to look after its interests until some time in the year 1700. On the 24th of January of that year Catharina Schutz, widow, the widow of Jacob Van de Walle, the heirs of Daniel Behagel, Johannes Kemler, Balthasar Jawert, Joh. Wilhelm Petersen, Gerhard van Mastricht, Johan Le Brun, and Maria Van de Wall, widow of Thomas Van Willigh, united in executing a power of attorney which set out that "because of the death of some heads of the sd Company & the Interruption of the French Warr, as also chiefly because of the absence of the Governor & the Indisposition of the sd our Factor, these our affairs in the sd Province are come to a stop, the more mentioned Mr. Pastorius having also desired by & in several of his Letters to be discharged" there was conferred full power and authority on "Mr. Daniel Falkner & Johannes Kelpius, as Inhabitants for the present in Pennsilvania, as also on Mr. Johannes Jawert, the son of one of our principals by name Mr. Balthasar Jawert of Lubeck, who hath resolved to transport himself thither." The three attorneys "Jointly or in case of the Death of one or the other they or he who

[1] Two of the twelve copies of this agreement, signed and sealed, are now in Philadelphia, one belonging to Mr. Howard Edwards and one to myself.

remains" were to have the administration of all the goods and lands, city lots, "the land bought by the Schuylkill for a brick kiln", to take an account from Pastorius, if any lands had been sold without their knowledge to "vindicate them" and to sell and make deeds. "Lastly we grant unto them herewith special power to appropriate fifty acres of our land in Germantown for the benefit of a schoolmaster, that the youth in reading writing & in good manners & education without partial admonishing to God and Christ may be brought up and instructed." [1]

On the first of March 1700 (this date may be 1708) Catharine Elizabeth Schutz, widow, made a deed of gift certifying that "of a well Considered mind willingly and of my accord * * * I have given as a free Gift or Present my whole Proportion or share of the 25000 acres of land purchased in Pensilvania—towit 4000 acres, the wch my aforesd husband deceased hath bought of my own money,—unto some pious families and Persons who are already in Pensilvania, or Intend to go thither this year, as likewise unto such that shall follow them in time to Come, among whom Mr. Daniel Falkner, who hath settled there already, & Mr. Arnold Stork who dwells at present at Duisburg but will shortly transport himself, shall be Constituted and appointed as Attornies, as well for themselves & their families to take part thereof, as also

[1] The original of this power of attorney now belongs to me.

according to their good Pleasure & Conscience to Cause to participate other pious families, especially the widows among the same, viz: widow Zimmermans & other two widows with their children being of Duisburg". And she added· "For as much as I also understand that George Muller of Frederickstadt is resolved to transport himself with his family into Pennsilvania my will is that he with his shall be one participant of this Donation."[1]

Pastorius says that in August, 1700, Daniel Falkner and Johannes Jawert having arrived they began, with Kelpius, to administer the affairs of the company, and that he delivered up to them the land, house, barn, stable, corn in and above the ground, cattle, household goods, utensils and two hundred and thirty pounds of arrears of rent, but that soon after Kelpius declined to act and Daniel Falkner "Plaid the Sot, making Bonefires of the company's flax in open street, giving a Piece of eight to one Boy to shew him in his drunken Fit a house in Philada, and to another a bit to light him his Pipe, &c Inso much that his Fellow Attorney, Johannes; Jawert, affixed an Advertisement to the Meeting house at Germantown that nobody should pay any rent or other Debt due to the Company unto the sd Falkner. Yea, and the then Bailif and Burgesses of the Germantown corporation acquainted the sd Company of the

[1] Pastorius MSS.

ill Administration of this their attorney here in a letter which as they afterwards did hear miscarried."[1]

Kelpius executed the following paper witnessed by Godfried Seelig and Joh. Hendrick Sprogel: "Whereas, upon recommendation of Mr. Daniel Falkner, the Frankfort Society hath made me ye subscribed their Plenipotentiary, together with the said Mr. Falkner & John Jawert, But my Circumstances not permitting to entangle myself in the like affairs I do Confess herewith that I do deliver all the authority, which is given unto me in the Letter of Attorney, to the said Society & him who did recommend me to the same, towit, Mr. Daniel Falkner, for to act & prosecute the Case of the said Society without me with Johan Jawert upon their account according to the Letter of Attorney who attributes to one or two as much power as to three in Case of a natural or Civil Death."[2] Jawert and Falkner on March 20th 1705 substituted and appointed George Lowther, an attorney at law in Philadelphia, the attorney in fact for the constituents. Lowther acted under the power because, on the 26th of March 1706, he gave notice to the tenants and other debtors to meet him on Friday, the 5th of April, at the house of Joseph Coulson in Germantown.

Meanwhile, in consequence of the notice given at the meeting house in Germantown on the 9th of

[1] Pastorius MSS. [2] Ibid.

November 1705, by Jawert, no one would buy lands from Falkner, and affairs remained in statu quo until the arrival in Pennsylvania of John Henry Sprogel, the witness to the renunciation of Kelpius. Pastorius asserts that Sprogel, "A cunning and fraudulent fellow, as appears by several letters sent from Holland after him, arrived in this Province, who one time would say that his father had some Interest in the Francfort Company, which is utterly false; and another time that he bought the Companies estate of Gerhard van Mastricht and the rest when in Germany and that the French took away his writings; which is no more true than the former. For after he was taken, he still for some weeks did lye in Holland, and so might either have had other deeds from them, or at least a letter from any of them to signify unto their attornies here that he bought the land, which he never bought one acre of, as since the said Van Mastricht did write."

It appears that Falkner had some kind of a writing, under which he claimed the right to act alone for the company, because Pastorius says in opposition to it that it was a mere declaration signed by but two of the company and they the youngest, that it did not attempt to revoke the prior power given to the three attorneys, and that when Lowther presented it on behalf of Falkner to the court at Germantown and asked to have it recorded, the court refused upon

the ground that it must be proved by two witnesses. Thereupon Falkner, being over head and ears in debt, and having failed to sell under this authority, united with Sprogel and made a friend of David Lloyd by giving to him a thousand acres of land which belonged to Benjamin Furley of Rotterdam.[1] Lloyd suggested an action of ejectment based upon the claim of Sprogel, and in which there could be a recovery by arrangement with Falkner acting as attorney for the company, and it is asserted by Pastorius that it was carried forward to judgment without notice to him, Jawert, or any one else interested in behalf of the company. He further complains: "And many honest men in high and low Germany, who are sincerely inclined to truth, Peace, Righteousness & Christianity, would not be occasioned to think so-strange of this the Pennsylvanian Lawyers Way of Ejectment sine die; especially when they hear that one called a Quaker had a hand in it; and the sd Pastorius might at least have obtained somewhat of a salary for his Service done unto the sd Company Seventeen Years and a half, and what he disbursed of his own during that time. Now the Company being thus miserably dispossessed of their Estate, as aforementioned, the sd Pastorius once with Arnold Cassel went to David Lloyd, and Complaining of the Wrong, also desired his Advice, presenting him a

[1]Pastorius MSS. Phœnixville now stands upon this land.

small fee, which he refused to take; but told him that he the sd Pastorius & Johannes Jawert were not included in the Ejectment, which they knew already. And When the sd Pastorius further asked the sd David Lloyd what was best for him to do? David drawing his shoulders told him that his land (viz., the 1000 acres) was Involved in that of the Company, and that he must seek for it at Sprogels, which Counsel the sd Pastorius scrupled to embrace."[1]

I shall give the record of the proceedings in the ejectment, which happens to be preserved, in its entirety:

"Pleas before Joseph Growdon, Samuel Finny, and Nathan Stanbury Esqrs., Justices of the court of Common Pleas, held for the County of Philadelphia the thirteenth day of January, in the seventh year of the reign of Queen Ann over Great Britain, France and Ireland, anno Domi, one thousand seven hundred and eight.

Philadelphia ss: Catharina Elizabeth Schutzin, widow, Elizabetha Van de Wallen widow and relict of Jacob Van de Wallen deceased, Daniel Behagel son and heir of Daniel Behagel deceased, Johannes Kemler, Johann Wilhelm Petersen, Gerhard Van Mastricht, Johann LeBrun, and Maria Van de Walle widow and relict of Dr. Thomas van Willigh, were

[1] Pastorius MSS.

attached to answer Richard Heather, Gentl., of a plea wherefore with force and arms Two thousand Six hundred and Seventy-five acres of land, One thousand acres of meadow, & Two thousand acres of Pasture with the appurtenances, in Germantown aforesd, in the county aforesd, and one hundred and thirty acres of land, one hundred acres of meadow, one hundred acres of Pasture, with the appurtenances in the City of Philadelphia, & within the Liberties thereof in the sd County of Philadelphia, and twenty two thousand three hundred & Seventy-seven acres of land, Ten thousand acres of meadow, Twenty thousand acres of Pasture, and Two & Twenty thousand acres of wood, with the appurt. in Manatany, in the sd County of Philadelphia, wch John Henry Sprogel Mercht. to the sd Richard demised for a term wch is not yet past, they entered and him from his farm aforesaid ejected, and other Wrongs to him did, to the great damage of him the sd Richard and against the peace of our Lady the Queen that now is &c.

And whereupon the said Richard, by Thomas Macnemara his attorney, complains that whereas the aforesd John Henry Sprogel, the fifth day of January in the seventh Year of the Reign of the Lady Ann now Queen of Great Britain &c. at Philadelphia aforesd did demise to the sd Richard the Tenements aforesaid, with their appurtenances, TO HAVE AND TO HOLD to the sd Richard & his assigns from

the five and twentieth day of December then last past untill the end and term of One year from thence next ensuing, and fully to be compleat & Ended, By vertue of wch demise the sd Richard into the Tenements aforesd with the appurtenences entred, and was thereof possessed, And he the sd Richard being so thereof possessed, the aforesaid Catharina Elizabeth Schutzin, Elizabeth Van de Wallen, Daniel Behagel, Johannes Kemler, Johan Wilhelm Petersen, Gerhard van Mastricht, Johan LeBrun, & Maria Van de Walle afterward, towit, the aforesd fifth day of January in the seventh year aforesd, with force and arms &c into the Tenements aforesd with the appurtenances which the aforesd John Henry Sprogel to the sd Richard in fform aforesd Demised for the sd Term wch is not past, Entred and him the sd Richard from his farm aforesd ejected, and other wrongs harms &c. to the great damage &c and against the peace &c. And whereupon he saith he is worse &, and hath damage to the Value of fifty pounds & thereof he brings Suite &c. And the aforesd Catharina Elizabetha Schutzin, Elizabeth Van de Wallen, Daniel Behagel, Johannes Kemler, Johan Wilhelm Petersen, Gerhard Van Mastricht, Johann LeBrun, & Maria van de Wallen, By Daniel Falckner their attorney, Specially Constituted, Come & defend the fforce & Injury when &c. And the sd Attorney saith that he

cannot be Informed by the said Defendants, his Masters & Imployers, of any answer for them to the aforesd Richard in the action aforesd to be given, & saith nothing else therein, whereby the sd Richard remains agt the aforesd Defts thereof undefended.

Therefore it is Considered by the Court here that the aforesd Richard may Recover agt the sd Catharina Elizabetha Schutzin, Elizabetha Van de Wallen, Daniel Behagel, Johannes Kemler, Johan Wilhelm Petersen, Gerhard Van Mastricht, Johan lebrun, & Maria van de Walle his Term aforesd of & in the Tenements aforesd with their appurt. yet to come, and upon this the aforesd Richard freely here in Court remitteth unto the aforesd Defts whatsoever damages by Occasion of the Trespass & Ejectment aforesd to him to be adjudged, Therefore the sd Defts of the Damages aforesd are Quit, and may goe thereof without Day, Nevertheless the sd Defts may be taken for the fine to be made to our Lady the Queen by Occasion of the Trespasse & Ejectment aforesaid &c. And hereupon the aforesd Richard prays the writ of the sd Lady the Queen, to the sherif of the sd County of Philadelphia to be directed, to Cause him to have his Possession of his Term aforesd yet to Come & in the Tenements aforesd with their appurtenances, And it is granted him Returnable here the third day of March next &c."

The plaintiff obtained possession under this judgment and immediately began to cut the timber. On the 1st of March 1708–9 Pastorius and Jawert presented petitions to the Governor and Council. Pastorius says that Sprogel "thro the contrivance or Ploting of Daniel Falkner, in ye last adjourned Court held for the County of Philada, the 13th of January, by means of a Fictio juris as they term it, (wherewith your petitioner is altogether unacquainted) hath gott a writt of Ejectmt, wch it doth not effect your Petitioner, yet the said Sprogel would have Ejected him out of his home" and that Sprogel "gott the said Writt of Ejectmt, so as to finish this his Contrivance in the County Court, to be held third day of the next month, between wch and the former no Provincial Court doth intervene for a Writt of Error, & hath further feed or retain'd the four known lawyers of this Province, in order to deprive as well yo'r Petitr., as likewise Johannes Jawert, of all advice in law, wch sufficiently argues his cause to be none of the best."

Jawert says in his petition that Sprogel "upon his arrival from Holland first told your Petitr. that he had bought ye said Estate of those persons residing in Germany, but afterwards denying it, again preferred to buy ye same of your Petitr., who is a partner thereof, and his joynt attorney Danll Falkner, and when your Petitr. could not accept of his

terms, he offering a very inconsiderable sum, then he promised one hundred pounds to your Petitr. gratis, or to put up for himself; but your Petitr. not willing to betray his trust, broke off; and so before he was aware & without ye least of his knowledge said Sprogel . . . ejected the said Germans out of ye said their estate . . . and besides he, ye said Sprogel, & Falkner, to make this their abominable plott to bear, did fee all the known attornies, or Lawyers, of this Province either to speak for ym, or to be silent in Court, in order to deprive your Petitr. of all advice in law, even so much as to find none to signify this, your Petitioners complaint, or to draw a Peticon to your Honour and Council in due form or English method." [1]

When the Hon. Peter McCall delivered his Address before the Law Academy, in the year 1838, he expressed regret that history had not preserved the names of the four lawyers who at that early date engrossed the entire practice of the bar. Fifty years later we need no longer entertain that regret. They were David Lloyd, George Lowther, Thomas Clark and Thomas MacNamara.

The clerk of the council says that the attempt was so heinous that it was scarcely considered credible. The petitioners were called in and examined, and it then appeared that "David Lloyd was

[1] Colonial Records, vol. ii., p. 430.

principal agent & Contriver of the whole, and it was affirmed that he had for his pay a thousand acres of Benjamin Furley's land which he the said Benjamin was so weak as to intrust Sprogel with the disposal of." It was ordered that "notice be given by all the Conveyances that may be to the Frankfort Society of Purchasers yt they forthwith send full powers to reverse ye judgment according to law."[1]

So far as we know the judgment was never reversed and Sprogel retained possession. In 1713 Jawert presented the matter to the Friends meeting doubtless for the purpose of having some condemnation visited by them upon David Lloyd. Fortunately we have this communication which says:

"To the Monthly Meeting of those whom the world calls Quakers, at Philadelphia:

Honorable Respected Friends: I have been informed by my Friend Pastorius that you desire to let you know the proceedings agt the Francfort Company, which Company every member of it have always bore a great respect & love to those wch the world calls Qrs for good but will take it very strange, to be used so as they have been, in their Country & under their Governmt. Not that I can say or suppose that any of the real friends which fear God have had any hand in it, neither can I blame the honorable Court that was at that time, they were ignorant of the matter! But I must blame one of your friends, as he calls himself, David Lloyd, to take such dirty cause in hand for the lucre of some great reward. Respected

[1] Colonial Records, vol. ii, p. 432.

friends, to tell you first by what power daniel Falkner did that wicked act he hath none at all, not so much as to sell one foot of the Companies land without my consent, which will appear by the letter of Attourney of which friend Pastorius has a Copie. But it seems falkner by the advice of abovesd friend D. L. produced a letter of one of the Company in Court, when they was just breaking up, which impowers him to sell the land as he says. If this letter was a true letter it could impower him no more as if any stranger had impowered him because of the agreement between all the members of the Company to act or do nothing without the Consent & knowledge of all the members, of which I and Pastorius are 2, much lesser to sell all their land by ONE'S order. When this wicked plot was contrived by them two Children of darkness, Daniel Falkner and Sprogel, they knew well enough that they could do nothing honestly without my consent, as one of the chief owners & attourney for the said company. Now to get me in, & save the money they saw they must give the lawyers, abovesd Sprogel came to my house and offered some small sum of money for the land to wch I could not consent. So Sprogel seeing that would not do offered me hundred pounds for a bribe, of wch the rest of the company should not know, besides my share in the land. But I told him that I rather would loose all my land than betray my trust. Seeing now that their wicked design would not prevail with me they sett david to work, without doubt he was well paid for it, (for which I understand friend furly suffers). david lloyd willing that his brethren should have a share in the buty, or else would not be seen to act alone, getts two more. Macnemary had but two periwicks, worth about ten pounds, for his fee as he told me himself. Now when it was concluded among them to fullfil their design they thought the fittest time when the Court was breaking up. According they did. But Mr. Clark being there which had had no share

yet thought it very strange that such a weighty business should be called at the breaking up of the Court, asked what it was. David Lloyd finding Clark inquiring very earnestly in the matter, for fear their wicked design should be discovered, said "Thom. hold thy tongue, thou shalt have fourty shillings" And so it was done. When friend Pastorius gave me notice of this I went directly up to Philada. and going to the Lawyers found all their tongues bound, was therefore obliged to petition the Governor & Council to allow me one Lawyer, which was Clark, who had only a promise of fourty shillings, but not received the same. But could not untie his tongue before I gave him tenn pounds ready down in silver & gold. For which ten pounds & other fast expenses I had not so much good as I had of a pott good beer & a penny roll. Friend Pastorius & Caspar Hood can tell more of it. But hope that the Lord that is the right Judge will not suffer such wickedness, but will lead the hearts of upright men to punish such wicked doings. I design to be up so soon as possible & see what I can do in it with the help of God and Christian Friends. I must beg your pardon dear friends that I trouble you with such a large letter. Wish the Lord your God and my God may comfort & bless you through his son Jesus and the power of the Holy Spirit. I am respected friends your friend and servant

John Jawert.

Maryland, Bohemia river, March the 25th Ano. 1713.

Pastorius wrote an account of the transaction with the evident intention of publishing it. There was at the time no printer in the Province and the difficulties in the way were so great that his plan was temporarily delayed. After the lapse of nearly two centuries this brochure written in 1711, showing to some extent the literature and law of the

period and the light in which the litterateur of that remote time viewed the contemporary lawyer, now at last appears in print. It gives evidence of the author's facility in composition, his literary taste and his extensive reading:

EXEMPLUM SINE EXEMPLO;

Or

(to borrow the Inscription of one of John Wilson's Plays,)

The CHEATS and the PROJECTORS.

I, Francis Daniel Pastorius, having formerly (towit these 28 years past) by Doctor Schutz & other honest men in high Germany, (Purchasers of 25000 acres of land in this Province of Pennsilvania, and known by the name of the Francfort Company) been made & Constituted their Attorney, and still being concerned as Copartner with them, to clear my Conscience (as touching the administration of their sd estate) before all People to whom the reading hereof may come, as I always endeavoured to keep the same void of offence towards the all seeing Eyes of God, am, if it were, constrained to publish this short relation, for as much as the aforesd Francfort Company is at present ejected out of their 25000 acres of land, summo jure, i, e, summa Injuria, by extreme right, extreme wrong. Now Intending Brevity, I shall let my Reader know that

the sd Company being all persons of approved Integrity & learning became, at least some of them, personally acquainted with our worthy Proprietary & Governr. William Penn, and purchased of him at a full rate the abovementioned 25000 acres, & in the very infancy of this Province disbursed large sums of money for the transporting of Servants Tenants and others; and that I, according to the best of my poor ability, (as many of the primitive Inhabitants & settlers yet surviving Swedes Dutch and English may Testify) administered their affairs 17 years and a half. But conscious of my weakness, have often requested them to disburden me of this Load of theirs I took on my Shoulders by their frequent assurance to be behind my heels into this Countrey as soon as the Ice were broken. Whereupon the heirs of the sd first Purchasers did appoint in my room Daniel Falkner, John Kelpius, & John Jawert, N B to act JOINTLY and not SEVERALLY. However when the sd John Kelpius had a forecast in what channel things would run he with all speed in a certain Instrument (of George Lowther's device who was the first Lawyer that unhappily got an hand into the Companies business) declared his Unwillingness to be any further concerned therein, and therefore was termed Civiliter Mortuus. Then Daniel Falkner & John Jawert acted in the dual number as the sd Companies Attornies for some few years.

For the sd Jawert being married and settled in Marieland, Falkner turned such a spendthrift and Ever-drunk-ever-dry that he made Bonefires of the Companies flax in open street at Germantown, giving a bit of silver money to one Lad for lighting his Tobacco-pipe, and a piece of eight to another for showing him a house in Philadelphia, which in his sober fits he knew as well as his own. Hereupon his Joint-attorney John Jawert affixed an ADVERTISEMENT at the then Meeting house of Germantown aforesd, dated the 9th of November 1705, wherein he forewarned all persons who had any Rent or other Debt to pay unto the sd Company to forbear the paying thereof &c. And so all was asleep, as Dormice do in winter, till about two years agoe, one John Henry Sprogel arrived in this Province, who being HE, that by the Collusion and treachery of the sd Daniel Falkner, by the wicked assistance of the Projectors to be hereafter to be spoken of, has through I know not what Fiction of the Law Ejected the sd Company out of their real estate of 25000 acres, I think it not amiss to give some little account of him. His parents I hear are of a good report and to be pittied for such a Scandal to their Family.[1] This degenerate and Prodigal

[1] John Henry Sprogel was born February 12, 1679. His father, an eminent author and clergyman of the same name, was teacher of the seminary at Quedlinburg. His mother was a daughter of the celebrated composer of music, Michael Wagner, and the church historian, Godfried Arnold, who wrote the Kirchen- und Ketzer-Historie, married his sister.

Child came the first time into this Province in anno 1700, and quickly owing more than he was worth, went over to his native land in order to procure some cash of his Father whom he said to be a rich Bishop on that side. In his return he was taken by the French & carried to Dunkerk, whence he escaped with an empty Brigantine into Holland, and by the (now repented of) Recommendation of Benjamin Furly & his Bookkeeper, H. L., found so much Credit with John Van der Gaegh, Merchant at Rotterdam & others as to bee Intrusted with a deal of goods. After he departed out of harms way in that country, and could not be found when search'd for in England, he came at last to Philada and there took his oath (as I am credibly informed) that all the said goods were his own directly & Indirectly. Some of the Germantown people then Visiting this their great Countryman and inquiring for letters were looked upon as Slaves, he being the only Anglified in all the Province of Pennsilvania. Howbeit none of us all (I beleeve) will ever have such a base and disloyal heart towards our Soveraign Lady the Queen of Great Britain as to get his Naturalization by the like disingenuous knack as he did, viz:

He died at the mouth of Sprogel's run at Manatawney, part of the land in question in this suit, where is now the borough of Pottstown.

Daniel Falkner, brother of Justus Falkner, the first Lutheran preacher in Pennsylvania, has given his name to Falkner's Swamp in Montgomery County. He wrote a description of Pennsylvania, entitled Curieuse Nachricht, published at Frankfort in 1702, in which he is called a Professor. He was bailiff of Germantown in 1701.

to borrow a key & to wear another man's coat as though it were his own &c. But to return to the Francfort Companies Concern, he the aforesd John Henry Sprogel having along with him a Letter of Attorney from the sd Benjamin Furly (afterwards though post festum revoked) sold 1000 acres of land, part of the sd Furly's purchase in this Province, unto David Lloyd at a reasonable price so as to have his Irreasonable advice in Law for the most unjust Entry upon the Companies land. For he the sd Sprogel, finding no means to satisfy his Old and Just Debts, was forced to find a new and untrodden way of Clearing his Scores, and to play the Gentleman sprung out of a Grocer's Shop. Therefore among a Swarm of tedious lies (wherewith I dare not trouble the Reader) he also spread this, that he stroke a bargain for the Companies land with Doctor Gerhard van Mastricht, one of the Copartners, of whom I but newly received an extreme kind Letter to the clean Contrary thereof. Moreover the sd Sprogel to pacify the abovementioned John Jawert, who likewise has a share in the sd Company, proffered unto him 700 Pounds Pensilvania Silver money for the land, and 100 Pounds besides as a Gratuity to himself &c. But he the sd Jawert being too honest for an Imposture and Bribe of this black stamp, Sprogel was driven to that Extremity (hap what may and let Frost & Fraud have hereafter as foul ends as they will) that he now must obtain the 25000 Acres & Arrears of Quitrents due to the

Francfort Company solely & alone of Daniel Falkner, who plunged in needlessly contracted debts over head & ears, could expect no gladder tidings (as he said himself) than the same Proffer made unto him. Here David Lloyd (whom to name again I am almost ashamed) comes in very gingerly to play his Roll FICTIONEM JURIS AD REIPSA DETRUDENDOS VEROS POSSESSORES, the which nevertheless it seems he was not bold-faced enough to do in his proper Clothes, but one Tho: Macknamara a Lawyer, if it were, started up for the purpose out of Marieland, (for a couple of Periwigs which he himself told me was all the Fee he had of this his brave Client for blushing in this Case) must be Nominally inserted in the Ejectment, lending like once the Cat her Paws to a more Crafty Creature for the drawing of the rosted Chestnuts from off the glowing coals. If any demand how this D—Ll[1] and Macknamara could possibly in so horrible a manner Circumvent the County Court, I suppose the fittest Answer I can Give to this Question is what Judge Groudon declared before our honourable Lieutenant Governor sitting in Council, viz: that at the tail of the Court Daniel Falkner and John Henry Sprogel did appear, and the aforenamed d–ll and M. laid the matter before the Court, and none there to object anything &c (For this cheating trick was managed so Clan-

[1] To ensure its not being overlooked, I call attention to this pun upon the names of David Lloyd and the Devil.

destinely that I and John Jawert were altogether ignorant thereof and when Tho: Clark the Queen's Attorney then present in Court did but rise, the others suspecting he might say somewhat in Obstruction of their hainous design, was gently pull'd down by the Sleeve and promised 40 shillings to be quiet, when he had nothing to offer) Thus they Surprised the Court and ob–et–subreptitie compassed the ejectment. Three days after the breaking up of the aforesd Court I heard of this unhandsom Juggle and gave Intelligence thereof to John Jawert, who forthwith came up and putt in his Humble Request to our well respected Lieutenant Governr and his honble Council, we had the sd Tho: Clark assigned to pleade our Cause and so Jawert paid him a Fee of ten Pounds, but to this day the sd Sprogel still stirs his stumps in the Companies lands & Rents without the least Controlment. Since all this there arrived divers letters from beyond the Sea, deciphering pretty fully abundance of the detestable gulleries whereby the sd Sprogel ensnared & trapan'd the Simplicity of upright & plaindealing people in Holland, admonishing him not to persist in his Evildoings but to Confess and make reparations to the defrauded, if not fourfold as penitent Zaccheus did, yet as far as his ill gōtten griff-graff gains would reach &c &c. And further there came also fresh Letters of Attorney from all the Partners of the

Francfort Company, Living in Germany, Impowering some very able Men in Philada to redress their so horribly distressed Estate in this Province by one worse than the worst Land-Pirate in the world could have done, the which I hope they will undertake, and heartily wish, that the LORD (who is called a Father to the fatherless and a Judge of the Widows, whereof there are at this instant several in the abovesd Company) may prosper their just Proceedings, and all, who reverence Righteousness & Equity countenance them therein, and not be partakers of the Spoil, nor of the Curse entailed thereon with the aforesd John Henry Sprogel, for whom notwithstanding the foregoing discovery of his unheardof Villanies I retain that sincere Love as to pray God Almighty to **Convict** & **Convert** him of & from his Perverseness, that he may forsake his diabolical lies, pride, bragging and boasting, and not longer continue the Vassal of Satan and heir of Hell, but become a child of Heaven and a follower of Christ, our ever-blessed Saviour, who as he is truth itself so likewise meek and lowly in heart, leading out of all cozening Practices into the way of holiness and eternal Felicity.

The cases, which you have now had the opportunity of reviewing, show that the law in that early time was administered in Pennsylvania with a considerable measure of technical skill, and what is of far more importance, that an enlightened spirit of justice and fairness controlled both the findings of juries and the decisions of judges. Women who had been maltreated, servants who had been abused by their masters, and poor creatures endangered by the credulous superstition of the age appear to have gone into those primitive courts with a faith, justified by the event, that neither prejudice, interest nor fanaticism would be thrown into the scale against them. Gross crimes did not occur and ferocious punishments were never inflicted.[1] The blood of man or woman, whipped through the public streets for difference of opinion, never stained the soil of Pennsylvania. It may well be a source, not of boastfulness, but of pride, that our jurisprudence, from its very beginning, justifies to a large extent the appreciative language of the Abbé Raynal when he says: "If despotism, superstition, or war should again plunge Europe into the barbarism from which the arts and philosophy have rescued it, these illuminations of the human mind will flash forth in the New World, and the light will first appear in Philadelphia."

[1] During the period covered by this paper I have found but one instance of the infliction of the death penalty, and that was for the crime of murder.

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