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REPORTS of CASES ARGUED and ADJUDGED in the COURT of KING'S BENCH, during the Time LORD MANSFIELD Presided in that Court; from Michaelmas Term, 30 GEO. II. 1756, to Easter Term, 12 GEO. III. 1772. In Five Volumes. By SIR JAMES BURROW, Knight, late MASTER of the CROWN-OFFICE, and One of the BENCHERS of the HONOURABLE SOCIETY of the INNER TEMPLE. The Fourth Edition, with the Addition of Critical Notes and Observations, and References to other Reports and Authorities. Vol. III. From Michaelmas Term, 2 GEO. III. 1761, to Trinity Term, 6 GEO. III. 1766, inclusive. 1812.

[1235] MICHAELMAS TERM, 2 GEO. III. B. R. 1761.

SULSTON *versus* NORTON. Monday, 16th Nov. 1761. [S. C. 1 Black. 317.] Action for bribery will lie, though the party do not vote.

This was an action on the statute of 2 G. 2, c. 24, § 7, "for the more effectual preventing bribery and corruption in the election of members to serve in Parliament."

The declaration contained five counts: first, that the defendant corrupted one Moore to vote for Lord Villiers and Sir Robert Burdett, by giving him five pounds five shillings; secondly, a corrupt agreement to give Moore five pounds five shillings; thirdly, a corrupt agreement to lend him five pounds five shillings upon a promissory note; fourthly, a corrupt agreement to deliver the note to Moore on voting; fifthly, for giving the note and counter-note hereafter mentioned. A verdict was found for the plaintiff, and entered on the first count.

Mr. Serjeant Hewitt, on behalf of the plaintiff, shewed cause against setting aside the verdict; which had been moved for, on the part of the defendant.

Mr. Caldecott, on behalf of the defendant, had objected, when he made that motion,

First, that the man did not in fact vote for the persons he promised to vote for; but, on the contrary, voted for their opponents: and therefore the defendant, as he did not by any corrupt agreement procure Moore to vote for them, cannot be said to have corrupted him to do so.

Secondly, that the verdict ought not to have been taken on the first count, which was for giving him the money.

[1236] To the first objection, the case of *Bush v. Rawlins* in B. R. P. and Tr. 29 G. 2, was said, by the serjeant, to be a full answer, being in point.

This is a contract for a voyage from Barnstaple to some port in Spain or Portugal, or some port in the Mediterranean, going round by Newfoundland.

Mr. Justice Yates concurred. It is all one entire voyage. The fish is the only lading of the ship: no matter where taken in. And the ship was lost before its arrival at the port of delivery. As the freighter lost his cargo, the mariner ought to lose his wages. The verdict is right.

Mr. Justice Aston declared himself to be of the same opinion.

The *postea* was ordered to be delivered to the defendant.

BENSON *versus* SIR THOMAS FREDERICK, BART. 1766. Excessive damages alone on a writ of inquiry not a cause for quashing the same.

Lord Mansfield reported the evidence given upon a writ of inquiry which had been executed before him; and upon which, 150*l.* damages had been given.

It was an action brought against the defendant, who was Colonel of the Middlesex Militia, for ordering the [1846] plaintiff, who was a common man therein, and had a furlough from the major, to be stripped, and to receive 20 lashes from two drummers.

Mr. Morton had moved to set aside this verdict, for excessiveness of damages; and had obtained a rule to shew cause.

The counsel on both sides left it upon his Lordship's report.

Lord Mansfield said, he had no doubt but that it might be right to give an opportunity of reconsidering verdicts where excessive damages had been given.

But in the present case, he was not dissatisfied with the verdict: for Sir Thomas had manifestly acted arbitrarily, unjustifiably and unreasonably. He had ordered this innocent man to be flogged (though unjustly and improperly,) merely out of spite to his major; because the major (Spinnage) who gave the man the furlough, had offended him: in which, he acted *malo animo*, and out of mere spite and revenge. And the man, though not much hurt indeed, was scandalized and disgraced by such a punishment. The defendant is a man of such substance as to be very able and sufficient to pay this sum; and could only save a part of it by having a new writ of inquiry, if we were to direct one. His Lordship acknowledged that he thought the damages were very great, and beyond the proportion of what the man had suffered: and yet, under the whole circumstances of the case, he was not for granting a new trial.

Mr. Justice Wilmot concurred; and observed, that it was rather owing to the lenity of the drummers than of the colonel, that the man did not suffer more. Therefore, though he had no doubt but that the Court might look upon these damages to be too high, in a common and ordinary case, and had power to set aside the verdict and award a new writ of inquiry; yet, as in this case, the defendant had acted very arbitrarily, and was well able to pay for it, he did not think the Court were obliged to set aside the verdict that the jury had found.

Mr. Justice Aston concurred. He was very full in vindicating the discretion of the Court, to grant new trials, even when the damages were ideal: and cited the case of * *Wood v. Gunston*. But as, in the present case, the defendant had acted very arbitrarily and unjustifiably, [1847] and under the circumstances that appeared upon the report, he did not think this to be a proper occasion for the Court to set the verdict aside.

Per Cur. unanimously,
Rule discharged.

HESKETH *versus* BRADDOCK. Tuesday, 11th Feb. 1766. Bye-law in restraint of trade bad.

This was a writ of error from the Great Sessions for the county of Chester; who had reversed the judgment of the Portmote Court of the City of Chester, in an action of debt brought there for recovering a penalty of five pounds, upon a bye-law made by the Corporation of the City of Chester. The breach of the bye-law was assigned in the defendant's keeping an open shop, and exercising the trade of a grocer within the said city; though he was not a freeman of the city.

* V. ante, pa. 394.