

otherwise than as an Enemy to the whole Society in general, and of every Member of it in Particular. And that we ought no more to furnish such a Man with the Means to treat us in the same Manner again, were he to make thousands Promises of behaving better for the Future, than we ought to furnish an hostile Enemy with Arms to destroy us: Notwithstanding these are my Sentiments, I am far from being desirous to conceal anything that may be alleged in favour of the AGREEMENT-BREAKERS; and therefore I send you here the Copy of a Case stated, and the Opinion of an eminent Lawyer thereon; which Opinion I am old is much insisted on as a Justification of the wretched Conduct we so sensibly feel the sad Effects of. If my Copy be right, the Case and the Opinion are exactly as follow:

5. and 6. Edw. VI. Chap. 14. **A**L L Persons buying or causing to be bought any Merchandize, or any Thing coming by Land or Water, toward any Market, or Fair to be Sold, or toward any City, Port, Haven, Creek, or Road of this Realm, or Wales; from an Part beyond the Seas to be Sold, or making any Bargain, Contract, or Promise, for buying or having the same to come, before they shall be in the Market, Fair, and ready to be sold, or making any Motion by Word, Letter, Message or otherwise, to any Person or Persons, for the enhancing the Price, or dearer selling of any of said Things, or dissuading, moving, or stirring any Person coming to the Market, or Fair; to forbear bringing any of said Things, to any Market and to be Sold, are declared to be Fore-stallers.

The Penalties of this Act are; For the first Offence, two Months Imprisonment, without Bail and Forfeiture of the Value of the Goods bought or had, &c.
 2d. Offence, Six Months Imprisonment, and Forfeiture of double the Value of the Goods, &c.
 3d. Offence, To be set in the Pillory in the City, where the Fore-staller dwells, and to forfeit all his Goods, &c. and to be committed to Prison during the King's Pleasure.

The above mentioned Act is made perpetual; but it is thereby Provided, That it shall not extend to any Wines, Oils, Sugars, Spices, Currans or other Foreign Victuals brought or to be brought into this Realm, from beyond the Seas (except Fish and Salt.)

A Commodity (of the Growth of one of our own Plantations) which was not in Use in England at the Time of passing either of the above mentioned Acts; bears so low a Price here, that the Planters abroad have little or no Profit by it.

The most considerable Part of the Merchants here, to whom this Commodity is consigned, are desirous to raise the Price of so much of it as is exported and consumed abroad: And for that Purpose, propose to sign an Agreement, That for a certain Time, to a certain Time to be mentioned in that Agreement, they will not sell that Commodity for Exportation under a particular Price, (which is an higher Price than it now bears.)

Will the making such an Agreement subject them to the Penalties of the Statute of the 5th and 6th of Edward 6th: Or will the Provisor in the Statute of the 13 of Elizabeth, free them therefrom?

The Statute of 13 Elizabeth, extends only to the Particulars therein mentioned: I am doubtful whether such an Agreement may not be within the Statute of 5th and 6th of Edward 6th: But I take it, that it is an Offence at Common Law, to enter into an Agreement, not to sell Goods but at such or such Prices.

May 29th, 1728. Thomas Reeve.

I take it for granted that the Law is as the Gentleman given his Opinion upon the Fact that was stated to him. or do I believe it difficult for a Man to get the Opinion of all the Gentlemen of the Long Robe in his Favour; if

he states his Facts as he would have them: For, I am inform'd, that a Lawyer does not enquire whether the Fact be truly or falsely stated; but that his only Business is to tell what the Law is upon the Fact that is stated to him. If this be so, it will not be improper to examine the State of the Case as it was offered to the learned Gentleman who gave his Opinion; which may be done by comparing it with a true State of the Case; or at least a State much nearer the Truth, than the foregoing, which I have attempted to draw, and is thus:

THE Staple of Maryland, and Virginia, is Tobacco; which is also a valuable Branch of the British Trade, and pays a considerable Revenue to the Crown; and no other of the British Plantations produces any great Quantity of it.

Many Thousands of his Majesty's Subjects in Great-Britain, and elsewhere, get their Livelihood by Tobacco; and the People of Maryland and Virginia entirely depend on the Produce of it. The greater Part of what is made in the said two Provinces, hath been usually consign'd by the Proprietors of it, on their own proper Account and Risque, to Merchants, or Factors, in London, to be sold by them, for a certain Commission.

Some of the said Merchants instead of acting for the Interest of their Employers in the Disposal of their Tobacco, have suffered their Employers to be driven into the Management of the Trade into their own Hands; and given Grounds of Suspicion, that they have secretly combin'd with some of the said Buyers; to keep down the Price of Tobacco: Which ill Conduct has been attended with the worst Consequences to the People of the said Provinces, and tends to reduce them to a Necessity of giving up the Tobacco-Trade; and seeking some other Means to procure themselves common Necessaries; which, in all Probability, will be less advantageous to Great-Britain than that Trade.

Others of the said Merchants, having a Regard to the Interest and Welfare of their Employers, knowing that that Branch of the British Trade, TOBACCO, must be lost, unless the Price of it could be raised, so as to enable those that depend on it, to live by the Fruits of their Industry; and that without the Concurrence of all, or at least, a great Majority of those employed to sell that Commodity, so great a Loss could not be prevented, nor the Inconveniencies under which the Trade lay, be remedied, prevailed on the rest to enter into an Agreement to raise Tobacco, design'd for Exportation to Foreign Parts, for a limited Time, to such a Rate as would afford the Proprietors of it, a bare Subsistence. This Agreement was entered into by the Merchants, and approved of by their Employers; yet some of the Merchants have broke thro' it and actually sold large Quantities of Tobacco to the Agent for the French East-India Company, and other foreign Buyers, to be exported to France and other foreign Parts, at such Rates as the Proprietors of the Tobacco cannot possibly live by; altho' They (the Merchants) might have had more. Upon this State these two Questions will arise.

1. Whether the Persons that were intrusted with the Sale of Tobacco, transgressed any Law, either Statute or Common, by endeavouring, or entering into an Agreement, to prevent the Loss of a valuable Branch of the British Trade, and a considerable Part of the Revenue of the Crown, by attempting to raise the Price of Tobacco design'd to be exported to foreign Parts, so as to afford the Makers and Proprietors of it, a bare Subsistence?

2. When such an Agreement was made by the Merchants, and approved of by their Employers; Whether it was not such a Breach of the Merchants Duty to break that Agreement, as renders him liable to make Satisfaction to his Employer for the Damage he sustained by the Merchant transgressing his Duty?

I would be very glad to know the Opinion of the Learned upon this Case: And I confess, that if entering into such an Agreement as is therein mentioned, the Circumstances being duly consider'd, (which I presume ought to be in every Case) be against Law, the AGREEMENT-BREAKERS have not acted the Criminal Part I think They did act.

But as the Law is said and allowed to be grounded upon Reason and calculated for the GOOD and SAFETY of the People; I cannot help thinking it absurd to imagine that it prohibits any Agreement that has no other End but what the Law it self is acknowledged to have. And such I take the Agreement among the London Merchants to be.

It seems very rational, to me, that any Man attempting, or Set of Men, combining to enhance the Price of any useful Commodity, should be liable to Punishment (as I suppose they are) because such Attempts and Combinations may be hurtful to Society, whose general Interest and Welfare is to be