

January 1st, 1777, and 1st March, 1781. *Robb v. McCune*, MSS. Rep. Sup. Court. April 1794.

In debt on bond, dated January 9th, 1779, for payment of £.80 on the 10th January, 1780, with lawful interest.

The defendant admitted himself to be liable to plaintiff for the sum expressed in the condition of the bond, rating the same at 8 for 1 according to the scale, with interest; but insisted the jury would estimate the debt in no other mode than that pointed out by the law.

The plaintiff contended that he was entitled to the nominal sum and interest, and offered to shew that the writing obligatory, on which the present suit was founded, was given in lieu of another obligation between the same parties, for a debt contracted long before the revolutionary war. He insisted, that it having been determined at *Easton*, that the depreciation act was binding on juries, and that they could not legally reduce partial payments, it would follow, that where that act did not apply, they had the power of "settling and adjusting the demand, according to equity and good conscience, upon due consideration had of the nature and circumstances of the case."

By the Court. This is not a necessary consequence of the decision cited. We sit here as a court of law, bound by certain known rules. The Legislature has not thought proper to clothe the jury with the power of determining in what cases the depreciation act does not apply; but has invested auditors with that authority, under the control of the court, and has armed them with

extraordinary powers to effectuate this end, by examining the parties on interrogatories. Where there is a dispute about depreciation, auditors alone are competent to give relief. Where no such dispute exists, the intervention of jury becomes indispensably necessary, and jurors are frequently called upon to decide cases wherein partial payments have been made in continental money. It would be obviously absurd, that in such instances, there should be any rule restrictive on auditors, but not binding on juries. We cannot go into the offered proofs, no authority being delegated to us for that purpose. Our decision rests as well on precedent, as principle. In a case at Lancaster, May 1783, between Benjamin Graff and John Witmer, and others, *McKean*, C. J. asserted the same doctrine.

Let the jury therefore be discharged, and the plaintiff apply for the nomination of auditors. Berks, *Nisi Prius*, September 1798. cor. *Teates and Smith*, J. *Levan's Administrators v. Frey*.

The case at *Easton* was before the same Judges, September 1795, *Miller v. Leonard and Rush*. The only question was, whether the jury could legally reduce a partial payment made in September 1778, and it was there held that they could not. MSS. Rep. S. C. 2 Dallas, 237. And see *Ricup v. Bixter*, 2 Dallas, 132.

The same principle has been held in the case of a legacy devised in times of continental money. *Kennedy v. Kennedy*. Chester, May 1800, cor. *Shippen*, C. J. and *Teates*, J.

1781.

CHAPTER DCCCCXXV.

An Act to prevent the exportation of bread and flour not merchantable, and for repealing, at a certain time, all the laws heretofore made for that purpose.

WHEREAS the regulations hitherto made for the inspection of bread and flour have not been quite effectual, and a variety of laws on the same subject tend to mislead the people.

I. Be it therefore enacted, and it is hereby enacted, That the act, entitled "*An Act to prevent the exportation of bread and flour not merchantable*,"* passed the fourteenth day of October, one thousand seven hundred and thirty-three (excepting that part of it which repeals the act therein mentioned, and called an act to prevent the exportation of bread and flour not merchantable) and the act, entitled "*A Supplement to the act, entitled An Act to prevent the exportation of bread and flour not merchantable, and to the act which is an amendment thereto*,"† passed on the sixth day of October, one

Certain acts continued in force till October next; except, &c. [chap. 382.]

then repealed. [chap. 384.]

1781. thousand seven hundred and seventy-nine, be and continue in force until the first day of October next; and that from and after that day the same acts be, and the same are hereby repealed.

II. *Provided always*, That the millers and bolters shall be allowed until the first day of October next to sell and dispose, for exportation, their flour in barrels of any other dimensions than those by the said acts, or any of them, prescribed.

III. And whereas it is the duty and interest of all governments to prevent fraud, and promote the interests of just and useful commerce :

Flour casks
how to be
made, &c.

their dimen-
sions.

Millers, bol-
ters and ba-
kers to pro-
vide brand
marks, and
enter them
with the
Clerk of the
Quarter
Sessions,
with their
names, &c.

Penalty.

Quantity to
be put in
respective
casks.

Penalty.

Flour to be
of due fine-
ness.

IV. *Be it therefore enacted*, That from and after the said first day of October next, all flour casks shall be made of good seasoned materials, well made, and tightened with ten hoops, sufficiently nailed with four nails in each chine hoop, and three nails in each upper bilge hoop, and of the following dimensions, viz. the staves to be of the length of twenty seven inches, but of different diameters at the heads, according to their numbers, that is to say; casks number one shall be of the diameter of eighteen inches at the head; casks number two sixteen inches and an half; and casks number three fifteen inches and an half; that every miller or bolter of flour and baker of bread, for transportation out of this state, shall provide and have a distinguishable brand mark, which he shall cause to be entered with the Clerk of the Quarter Sessions for the county where he doth reside, together with his name and place of abode, under the penalty of the sum of five shillings for every day, during which he shall have exercised his said business of a miller, bolter or baker, without such entry; for the making of which entries the said Clerk shall be entitled to the sum of one shilling each; and that every miller or bolter of flour or baker of bread shall, with his said mark, brand each and every cask of flour or bread, before the same shall be removed from the place where the same was bolted or baked; and every miller or bolter shall also brand every cask of flour, according to the respective diameters above specified, with the said numbers one, two or three, and with the weight respectively, under the penalty of one shilling and six-pence for every barrel of flour not hooped and nailed as aforesaid, and for every cask of flour or bread so removed, and not branded as aforesaid.

V. *And be it further enacted*, That the said millers or bolters shall put in the cask number one, the full quantity or weight of two hundred and twenty-four pounds of flour; in the cask number two, the full quantity or weight of one hundred and ninety-six pounds; and in the cask numbered three, the full quantity or weight of one hundred and sixty-eight pounds of flour; and that if any miller or bolter shall use or pack with flour any other casks, than of the three several sizes and dimensions aforesaid, he shall forfeit to the purchaser thereof the value or charge of such cask in his account; and that if any miller or bolter shall pack any cask of the said sizes or dimensions, with a less quantity of flour than is above specified for the same, respectively, he shall forfeit the same casks and flour.

VI. *And be it further enacted*, That all wheat flour bolted, for sale and transportation out of the state, shall be made merchantable and of due fineness, without any mixture of coarser and other flour.

VII. *And be it further enacted,* That all casks wherein bread shall be packed, shall be weighed, and the tare marked thereon; and if any person shall put a false or wrong tare on any cask of bread, to the disadvantage of the purchaser, he or she shall forfeit, for every cask so falsely tared, the sum of five shillings; and the Inspectors, or their deputies, respectively, upon suspicion, or upon the request of the buyers, shall, and are hereby required to unpack any such cask of flour or bread as aforesaid; and if there shall be a lesser quantity of flour than is above directed, or if the cask or casks, wherein bread is packed, shall be found to weigh more than is marked thereon, then the miller, bolter or baker, as the case may be, shall pay the charges of unpacking and repacking, over and above the penalties aforesaid; but otherwise the said charges shall be paid by the Inspector, or by the purchaser, if the trial be made at his request.

1781.
Casks of bread to be weighed, &c.
Penalty.

Power of the Inspectors and their deputies, &c.

VIII. *And be it further enacted,* That every baker of bread for exportation shall deliver, with the said bread, an invoice of the contents thereof, with his brand mark made thereon, together with his name signed thereto, under the penalty of forty shillings for every invoice delivered contrary hereto; and if any cask or casks of bread, upon trial, be found lighter than is set down in the invoice, such baker shall forfeit the bread and casks so falsely invoiced.

Bakers to deliver invoices with their brands, &c.

IX. *And be it enacted,* That no cart, wain or waggon, shall be made use of, for the carrying or conveying of flour or bread from any mill or other place to the place of exportation, or to any landing-place, but such as shall be provided with a good and sufficient covering; and that no flour shall be left at any landing or other place, in order to be transported, except the same be put in a store, or shelter sufficient to keep it dry; and that no flour or bread shall be carried or conveyed by water from any mill or landing-place to the place of exportation in any open boat, flat or shallop, without a good and sufficient covering or tarpawling, to secure the same in case of rain.

Waggons, &c. to have covering, &c.

X. *And be it enacted,* That if the owner or possessor of any cart, wain or waggon, boat, flat or shallop, shall cause or suffer any flour or bread to be wet or take damage, for want of due care, or not being provided for as aforesaid, in the moving, carrying or transporting the same from any mill or other place to the place of exportation, every such person shall forfeit, for every cask of flour or bread so damaged, the sum of one shilling.

Penalty for damage done to bread, &c.

XI. *And be it enacted,* That no merchant, or other person whatsoever, shall lade or ship any flour for transportation out of this state, before he, she or they shall offer the same to the view and examination of the inspector of the port, from whence the same is shipped, or intended to be shipped, or his deputy, under the penalty of five shillings for every cask: And the said Inspector or deputy shall try and search the same, by boring the head, and piercing it through with a proper instrument, in order to prove whether it be honestly and well packed; as also to enable him to judge of the goodness thereof, and shall afterwards plug up the hole: And if the said inspector shall judge the same to be merchantable, he shall brand every such cask of flour on the quarter with the arms of the

Flour to be inspected.

Merchantable flour to be branded with state arms, &c.

Reward of inspectors.

1781. state of Pennsylvania, in a fair and distinguishable manner, for which he shall receive one penny for each cask, and no more; but if he shall adjudge such flour not to be merchantable, and the possessor and owner thereof shall acquiesce under such judgment, he shall in such case pay to the said Inspector the said sum of one penny for each and every such cask, and on his refusal or neglect, the Inspector may recover the same as debts under forty shillings are recoverable, with costs of suit; and if the possessor of any flour shall offer to transport the same out of this state, without being proved and branded in the manner herein before mentioned, the same flour shall be forfeited.

XII. *And be it further enacted,* That where any dispute shall arise between any of the said inspectors, or their deputies, with the owner or possessor, concerning the fineness or goodness of such flour, or the goodness of the materials, of which the casks are made, then, upon application made by the owner or possessor of such flour to one of the Magistrates of the city and county, where the dispute shall arise, the said Magistrate shall issue his warrant to three indifferent and judicious persons, to be triers thereof (one of them to be named by the said owner or possessor, one by the said Inspector or his deputy, and the third by the said Magistrate) directing the said triers to view and examine the said flour, and make report to him forthwith touching the condition thereof; and that if they shall find the said flour not merchantable, that they certify to him the cause thereof, and whether it be, that the said flour wants due fineness, is musty, sour, or the like: and if sour, whether such sourness is occasioned by the greenness of the timber whereof the casks are made, or by being brought in an open boat, or shallop, or upon the deck of any other vessel, without a tarpawling or cover, or for any other, and what cause; and the said Magistrate shall thereupon give his judgment, agreeable to the report of the said triers, or any two of them; and in case the said Magistrate shall, on such report, adjudge the flour not to be merchantable, he shall award the owner or possessor thereof to pay into the hands of the said Inspector, one shilling for each and every such cask so adjudged to be unmerchantable, besides reasonable costs; but in case the said flour shall be found merchantable, the Inspector shall be adjudged to pay all the costs which shall have accrued; and the said officer shall thereupon brand the said flour, in the manner before directed; and if it shall appear, either by the report aforesaid, or otherwise, that any flour is become unmerchantable by fault of the miller, bolter, shallopman, flatman, carter or waggoner, in every such case the owner of such flour shall recover against the said miller, bolter, shallopman, flatman, carter or waggoner, by default of whom, or of whose servant or servants, such flour shall have been injured, the damages which such owner shall have sustained, with full costs of suit. (1)

XIII. *And be it further enacted,* That the masters of ships and other vessels lading flour for exportation from this state shall in their manifest, which in pursuance of the act, entitled *An Act*

(1) For settling disputes between the merchant and inspector, see chap. 1422

Manner of proceeding in cases of dispute respecting the fineness of flour, &c.

Number of barrels of flour shipped to be

for regulating trade and navigation in this state,* they are obliged to exhibit and deliver to the Naval-Officer thereof, expressly and distinctly declare how many barrels of flour are shipped on board of their respective vessels, and by whom each parcel thereof is shipped, to which manifest or declaration the Inspector aforesaid shall have free access, and liberty to take abstracts thereof; and if any master of a vessel shall refuse or neglect to make such return to the Naval-Officer, as aforesaid, he shall, over and above the penalty in the said last named act mentioned, forfeit to the said Inspector the amount of his fees for trying and examining the whole cargo of flour shipped on board of his vessel.

1781.

set forth in the manifest, &c.

and by whom shipped, &c. [7 chap. 804.]

Penalty.

XIV. *And be it further enacted,* That the said Inspector, or his deputies, shall have full power and authority, by virtue of this act, and without any further or other warrant, to enter on board any ship or other vessel whatsoever, lying or being in any port or place of this state or into any mill, store or granary, within the same, to search for and discover any flour intended to be transported out of this state; and if the owner or possessor thereof, or their servants or others, shall deny him or them entrance, or if the said Inspector or his deputies shall be in any wise molested in making such discovery as aforesaid, or if such owner or possessor shall refuse to permit the said Inspector or his deputy to view or examine the same, every such person so offending, shall forfeit and pay the sum of ten pounds for every such offence.

Inspector to enter on board vessels, and search, &c.

Penalty on persons preventing him, &c.

XV. *And be it further enacted,* That if any person or persons shall counterfeit the aforesaid brand marks, or either of them, or impress or brand the same on any cask of flour, he, she or they, being thereof legally convicted, shall, for the first offence, forfeit and pay the sum of five pounds; for the second offence, the sum of ten pounds; and for the third offence, shall be committed to gaol, and sentenced to the pillory, there to stand the space of two hours, on a market day, in any city, borough or town, where the fact shall have been committed.

Persons counterfeiting brand marks, how to be punished, &c.

XVI. *And be it further enacted,* That none of the said Inspectors or their deputies shall, directly or indirectly, vend, barter, sell, exchange or trade in flour, under the penalty of fifty pounds, to be recovered by action of debt, bill, plaint or information, by any person who will sue for the same to effect, in any Court of Record in this state; the one half thereof to the use of the person or persons so suing, the other half to be paid to the Treasurer of the state, for the public use: And every person or persons so offending, and thereof convicted, shall be, and they are hereby, disabled from acting thereafter in their respective offices.

Inspectors not to trade in flour.

XVII. *And be it further enacted,* That the said Inspectors be empowered to appoint deputies under them; but before any Inspector or deputy shall do any thing in his said office, he shall take an oath or affirmation, before any one Justice of the Peace of any county of this state, faithfully and impartially to perform his trust and duty, to the best of his skill and understanding, according to the directions of this present act.

Inspectors may appoint deputies, who shall take an oath or affirmation, &c.

XVIII. *And be it further enacted,* That all and singular the fines, forfeitures and charges mentioned in this act, where the same

Fines, forfeitures and charges,

1781. respectively exceed not five pounds, shall be recovered in the same manner as other debts and demands under the said sum of five pounds are recoverable; and where the same exceed the said sum of five pounds, they may be sued for, and shall be recovered in any Court of Record in this state, by bill, plaint or information; wherein no essoin, protection, or wager of law, nor more than one imparlance, shall be allowed: All which said fines and forfeitures, not herein before directed how to be applied, shall be paid to the said Inspector or his deputy, who shall keep a just and true account thereof; and shall once in every year, at the time of appointing Overseers of the poor, deliver unto the Magistrate a true and exact list of all such fines and forfeitures; the one half whereof he shall immediately pay into the hands of the Overseers of the poor of the place where the forfeitures happen, and shall retain the other half to his own use; and if any of the said Inspectors or deputies shall neglect or refuse to account and pay as aforesaid, he shall forfeit his office.

[XIX. *And be it further enacted*, That Jacob Bright bc, and he is hereby appointed Inspector for the city and county of Philadelphia; and Adam Grubb for the county of Chester; and Joseph M'Elvaine for the county of Bucks; the said Inspectors to hold their offices, from the publication of this act, for the space of four years, and from thence until the end of the next sitting of Assembly, and no longer, except they shall be re-appointed by the Assembly; and if any or either of the said Inspectors shall happen to die, or by any accident, or otherwise, shall be rendered incapable, or shall knowingly suffer any flour to be carried out of this state, without trying every cask thereof as aforesaid, or shall neglect to keep a sufficient number of deputies to assist him in the execution of his office, whereby the possessor of such flour shall suffer any damage or delay, or shall otherwise misbehave him or themselves therein, it shall and may be lawful to and for a majority of the Justices of the Peace of the city of Philadelphia, or of the respective counties before mentioned, and they are hereby enjoined and required, on the conviction of the said officer of any of the said crimes, or on his death, to nominate and appoint some other fit person, in his or their place or places, who shall thereupon, on taking the said oath, be the Inspector, until the Assembly shall appoint another, and be invested with the powers, and subject to the duties, herein before mentioned.

Passed 5th April, 1781.—Recorded in Law Book vol. I. page 423. (m)

(m) By an act of the 28th of December, 1781, (chap. 947,) a supplement was passed to the act in the text, by which a penalty was imposed for offering flour for sale, in casks made of unseasoned materials; the penalty for not entering brand marks was made thirty shillings for every neglect, instead of five shillings per day; the penalty where casks are deficient in weight, was lowered; the Inspector's brand was changed from the state arms to S. P. and

the exportation of middlings was regulated. By an act of the 15th of September, 1784 (chap. 1101,) further provisions were made for the inspection of superfine flour. By an act of the 12th of September, 1789, (chap. 1422,) further regulations are made respecting the inspection of middlings; millers and bolters are allowed to pack wheat flour for exportation in casks made of staves twenty-three inches long, and twelve and an half inches diameter at

1781.
how to be
recovered,

and applied.

Inspectors
names.

Duration of
their offices.

Vacancies
how to be
supplied.
[Obsolete.
The appoint-
ment is now
vested in the
Governor
by the
Constitu-
tion.]

the head, complying with certain terms; and a penalty is imposed for offering flour for sale in casks of dimensions inferior to those prescribed by law. For acts making provision for the inspection of flour in the western counties, see post. chap. 1006, chap. 1584. For acts regulating the assize of bread, see chap. 707, 1936. (*Note to former edition.*)

By a supplement to the laws for preventing the exportation of flour not merchantable, passed April 17th, 1795, (chap 1851,) all flour or middlings brought for sale as flour of wheat, shall be condemned if there is any flour of Indian corn mixed with it, and a penalty therefor. But an appeal is allowed from the decision of the Inspector: and if the decision is confirmed, the costs shall be paid by the owner, otherwise by the Inspector. Appeal must be prosecuted within 20 days, &c.

By another supplement, passed March 16th, 1798, (chap 1964) The Inspector of flour is authorized to receive the

fees of inspection from the owner or owners, his, her or their agent or factors, or other persons in possession of the flour at the time of inspection, and the said owner, &c. shall pay the full amount of the fees due for inspection, and the owner, &c. so paying, is authorized to demand and receive the said fees of inspection from the purchasers of the flour, and the fees of inspection so paid, shall be a charge on the sale of the flour by the owner, &c. or other person in possession after its inspection, distinct and separate from the price agreed on for the said flour.

By a further supplement, passed March 15th, 1800. (chap. 2133.) Flour made of rye and Indian corn is subjected to inspection, and the manner of packing and branding the same is prescribed; may be packed in hogsheads of certain dimensions, and the inspection fee fixed; fines, penalties and forfeitures to be recovered as directed by the act in the text.

CHAPTER DCCCCXXIX.

An ACT for establishing a Land-Office, and for other purposes therein mentioned.

WHEREAS many of the lands in this state, heretofore taken up and located under grants, warrants and other office rights, before the tenth day of December, in the year of our Lord one thousand seven hundred and seventy-six, are yet unpatented, and the purchase money and arrearages of purchase money thereon due are vested in the commonwealth, subject to the disposal of the Legislature, and the owners and holders of such rights, since the shutting up of the land-office, have not had it in their power to pay in the purchase money, or arrearages of purchase money, and obtain patents, to compleat their titles to the same: For remedy whereof,

II. *Be it enacted, and it is hereby enacted,* That an office be, and it is hereby erected, constituted and appointed, which shall consist of three persons, or officers, called or known by the names of the Secretary of the land-office, Receiver-General* and Surveyor-General, which office shall be held and kept in the city of Philadelphia, or such other place as the General Assembly shall from time to time order and direct, and that into the said office shall be removed and safely kept all the records and papers of the former land-office or Board of Property, in the hands, custody or possession of the late Secretary, Surveyor-General, Receiver-General, or of any other person or persons entrusted with the care or management thereof, by or under the late Proprietaries of the province of Pennsylvania, or of their Governors or Lieutenant or Deputy-Governors; and all future grants and confirmations of land shall issue from the said office, in manner and form herein mentioned.

Office to consist of three persons.

Their names.

Where to be kept.

Records of the former offices to be removed.

[*The office of Receiver-General is abolished, and the duties vested in the State-Treasurer.]