COURT REPORTS,

Oyer and Terminer, &c.

Before Hon. James P. Sterrett.

This Court met at ten o'clock Monday morning and proceeded with the

LITZ BARRATRY CASE.

John Litz, a deputized Constable, was arraigned on Friday last on an indictment charging him with barratry, in other words that he was a "common barrator" in having incited unjust and vexatious suits against a number of persons. The evidence in the case, as far as elicited, has appeared in the GAZETTE.

Gen. Collier opened the case on behalf of the defense. He defined the legal meaning of barratry, dwelling upon the requirement that before conviction could be had the Commonwealth must prove affirmatively that three or more unjust and vexatious suits had been brought by the defendant. The act of selling liquor on Sunday was unlawful, punishable by a civil penalty and also by fine and imprisonment. The civil penalty, fifty dollars, the law directed to be divided, the informer to get one half, and the remainder to be paid over to the Guardians of the Poor. The suits brought by the defendant being for the violation of the law referred to, and it not having been shown that any one of them was unjust or vexatious, he (Gen. Collier) submitted whether they should be required to go into a defense.

The Court said it did not appear that any of the suits before Alderman Donaldson were brought for the penalty, fifty dollars, although the penalty was paid. Could a suit be said to be just where the settlement of it was improper? Suits may be unjust in their proceeding as well as conception.

Gen. Collier said the defendant was being tried for barratry, and could not be held responsible for other matters in the consideration of the present case. The counsel proceed his claim that the Commonwealth had not proven their case affirmatively, and that the burden of proof as to the unjustness of the suits could not be thrown upon the defense.

Judge Sterrett thought there was some evidence adduced bearing upon the allegation that the suits were unjust, which was a question of fact for the consideration of the jury.

George Fortune, Esq., Secretary and Agent for the Guardians of the Poor, was called, and asked how much money he had received from Alderman Donaldson as the moiety of fines received for violations of the Sunday liquor law?

Mr. Swartzwelder objected, unless the witness could state in what particular case he had received money. The Court sustained the objection—the gross amount he had received would not prove that a cent had been paid over in the particular cases in controversy.

Benjamin W. Morgan was called and testified that he was present at a meeting held in Alderman Donaldson's office, when William Elwein was there. The point made by Litz in Alderman Donaldson's "little back room" no one was present. Elwein testified on Friday that others were present.

Alderman Donaldson was recalled and permitted to make an explanation in the case of Wm. H. Jones, who had been prosecuted before him by John Litz and Hamilton Lowe, testifying that he had nothing to do with the settlement of the case in which the latter (Lowe) was prosecutor. Jones paid Lowe the money, stating that he would rather pay the amount required and get rid of the matter. The Alderman further testified that he never told any person prosecuted before him that when the time for hearing came he would "keep the witnesses away." The Alderman further explained, mentioning the idea that he had received money for Litz in the manner referred to by witnesses for the commonwealth.

Brown Dawson was, as stated, an important witness for the defense, and having failed to attend, after being subpœnaed, an attachment was issued for him. The officer who went in search reported that he had been unable to find him, or ascertain his whereabouts.

Officer John Sarber was called, but also did not answer.

The evidence in the case having been closed, A. G. Cochran, Esq., began the argument to the jury. Barratry was one of the most serious crimes with which a person could be charged, and the evidence in the case presented a most vivid exhibition of the culpility of the defendant. The "little back room" in Alderman Donaldson's office reminded the speaker of the school boy story about the spider and the fly. From the facts it appeared, however, that there were two spiders engaged in coaxing victims into the "little back" parlor. Parties were prosecuted and the cases were settled, the Alderman observing that under an act of assembly he had a right to discharge the parties upon paying a fine of fifty dollars and the costs. No docket entries were made, that not being cross-licensed necessary. Mr. Cochran went over the evidence relations, commenting upon each particular witness of the receipt of money by Litz and the Alderman. There were four cases in which Litz was the prosecutor and in which Litz received money. The names of the parties prosecuted were William Berger, George Schmidt, William Linstem and George Gosenecumint. The Court recharged, said the Alderman, because there were no witnesses against them, consequently they were innocent and John Litz was a common barrator.

Gen. Collier said he did not for the more he believed there were two spiders to every case. In this case the defense had a side. The jury were to decide whether the defendant was guilty of the barratrous offense with which he was charged. It was to be decided whether the suits brought were unjust, vexatious in fact no doubt they were. The act of Assembly defined barratry to be the bringing of unjust and vexatious suits. John Litz was a mere puppet in the case. The great question was which or the European custom of using liquor on Sunday was to be Americanized, and this case was but the commencement of the movement in that direction. The injustice of the suits was a question of fact for the jury. Under the law every person who sells liquor on Sunday is to be deemed guilty of misdemeanor, and is subject to both a civil and criminal proceeding, the informer, in the civil process, being entitled to one-half the penalty. In the cases referred to informations had been made, and they were settled improperly, as stated, not only Litz but the parties prosecuted were equally culpable, but did they make the suits subject? Would the persons accused have been willing to settle if they were innocent? Vexatious the suits were, to men who had sold liquor on Sunday in defiance of law. There was no evidence in the case to justify the jury in saying that the suits were unjust, and whatever else the defendant might be guilty of with others, it was not barratry, as charged. The defendant not having been in court within the meaning of the law, there could be no conviction. In the cases relied upon, in which the parties prosecuted had paid money to Litz, it was not proshown that the Alderman had sold liquor on Sunday; they did not *dare* to say that they did not sell. If the defendant was not permitted to ask the question. The arrangement was, they were to come into court, swear that they were discharged, and therefore it was to be claimed that they were innocent, the suits unjust, and thus to convict defendant of barratry. A new way, doubtedly, of proving that charge. When a man is outlawed by an unjust charge, how swift he is to proclaim his innocence and demand redress for his wrongs. How remarkable the difference in the present case! Why the reason, you thought? Let the rule prevail, that a man's discharge before an Alderman, leads this case, is evidence of the injustice of the charge against him, and then have well nonsensical to prosecutions for selling liquor on sunday. Our peaceful Sabbaths will soon be no more. Gen. Collier, in a similar case, said that the defendant had