

Of course he was a non-striker and I don't wonder that he said he expected to be called a scab when he had been called a scab every time he went to work, and even through open windows. What he evidently meant was that he expected it from the strikers and persons like this defendant; not by anyone else or elsewhere; or that it was true that he was a mean, low, fellow. Is the argument that because of this admission he admitted it was true that he was a mean, low man, or that it was just? And even if it was true, I think that persons who are actually bastards or prostitutes and have those appellations applied to them in the public streets are entitled to the protection of such a law.

Further, I do not think that calling a man a "natural born scab" or saying he has a "scab face" is usually termed discussion or argument. Moreover, I think it was not necessary for the defendant to call the plaintiff anything, good or bad.

A point was taken before us that was not taken before the magistrate or at the hearing in the County Court. I say that because the learned Judge in his judgment quotes the by-law as if it read "abusive, insulting or provoking language," whereas the by-law uses "and," not "or," and the point is made that the information therefore is not sufficient because the word "abusive" is not included. I think that point cannot be taken now because of the statute. Moreover I think that the information is sufficient under the Summary Convictions Act without that word and would be so without the words "insulting and provoking." It sets out the words which were actually used and it continues "contrary to the by-law," pointing it out: *In Re William Perham*, 5 H. & N. 30.

Then it was contended that the by-law should have been set out in the conviction. This is not necessary. Sec. 68 of the Summary Convictions Act requires judicial notice to be taken of such a by-law.

In my opinion the appeal should be allowed and the order of the County Court Judge of the 13th December, 1910, should be set aside, and it should be ordered that the conviction should be affirmed and that the said defendant should pay the penalty and costs adjudged by the said conviction and be dealt with according to its terms; the plaintiff to have the costs of appeal to this Court and to the County Court.