

together not to work until better wages were obtained. This decision was rendered in construing the agreement to be "an act injurious to trade or commerce," which by statute was a penal offence. This case was considered an authority for the proposition that working men could not combine to peaceably raise their wages in New York without forming an unlawful conspiracy, which rule was followed until 1870, when its harshness was realized, and a more liberal one was adopted by statutory enactment.

Whether or not a conspiracy exists depends upon whether a lawful object is sought, or whether lawful means are being employed in its accomplishment, both of which must be determined by considering what elements constitute a lawful or unlawful purpose, and what means may with impunity be employed.

4. Malicious Intent. — The terms "malice," "motive," and "intent" are used in a liberal sense in the books, and in their application are not clearly differentiated. Malice is constantly referred to as an essential of a boycott, and boycotting, when actionable, as a malicious wrong. It seems, however, that the term "malice" should find its application respective to the intention of the offender, and not to his motive. In *Barr v. Essex Trade Council*, 30 Alt. 881, the court said: "When we speak in this connection of an act done with a malicious motive it does not necessarily imply that the defendants were actuated in their proceeding by spite or malice against the complainant in the sense that their motive was to injure him personally, but that they desired to injure him in his business in order to force him not to do what he had a perfect right to do." It is a malicious wrong to intentionally do those things, without legal excuse, that will in the natural course of events injure another in his lawful pursuits and attainments. Malice does not mean merely an intent to harm, but an intent to do a wrongful harm or injury, and if the said acts are wrongful, malice will be implied, and the wrong done a malicious one (q). In *Keeble v. Heckeringill*, 11 Eastern 573, note, the defendant had persisted in firing guns to frighten away wild fowl about to enter plaintiff's decoy pond. In discussing the case Lord Holt said, relative to the intent: "If the defendant had merely set up a second decoy, no action would lie; but it is otherwise where a violent or malicious act is done to a man's occupation, profession, or way of getting a livelihood."

(q) *Doremus et al. v. Hennesly*, 52 N. W. 924.