

bring an action for damages where injury has been sustained (n), but the gist of all civil actions for damages is the actual damage sustained and not the conspiracy, or confederating together (o). The plaintiff must shew a cause of action irrespective of a conspiracy, although proof of a conspiracy is usually necessary as a matter of evidence where the acts alleged are of such a nature as to preclude the idea that they could have been done without a conspiracy existing.

A review of the penal statutes of the several States of the Union as to boycotts and labour combinations (for a compilation of which the writer is indebted to the Sixteenth Annual Report of the Commissioner of Labour, 1901) shews that twenty-four States have made such combinations an indictable offence under statute; also two other States have thought it necessary to protect labour organizations by special statute, giving them a guaranteed range that shall not be regarded a conspiracy. These statutes are in slight respects different, and subject to interpretation by the respective State courts, but, in general, they seem to make the subject of criminal prosecution the mere conspiracy to do those acts, and by those means, which, if accomplished, would form the gist of a civil action. As the differences existing with respect to actions brought under the statute, and where no statute exists, are more properly matters of pleading and procedure they will not be discussed here.

While the statement just made as to the application of the statutes is believed correct, it is interesting to notice how at times the Legislatures in passing them have, in defining a conspiracy, abrogated the common law meaning of the term, aided by some holdings thereunder that do not seem fully sound, but which it is believed have, in the main, been cured by subsequent legislation. The State of New York furnished a good example where probably the first trial in this country for conspiracy to raise wages occurred in 1741, in which bakers were convicted of conspiracy for refusing to bake until their wages were raised (p), and the same principle was adhered to again in 1810. In 1834, Judge Savage, in the noted case of *People v. Fisher*, 4 Wend. 9, held certain journeymen shoemakers liable for conspiracy for merely agreeing

(n) *Herron v. Hughes*, 25 Cal. 555.

(o) Am. & Eng. Enc. of Law, vol. 6, page 873.

(p) Trial of Journeymen Cordwainers, p. 83, (1810).