

Phippen, J.A.]

KING v. GAGE.

[May 21.]

Conspiracy in restraint of trade—Criminal combination—Criminal Code, s. 498—Grain Exchange, Rules and Regulations.

The defendants were indicted under sec. 498 of Crim. Code for conspiring and combining to restrain or injure trade or commerce in relation to wheat.

Held, 1. Notwithstanding the absence of the word "unduly" from sub-section (b) of that section and its presence in the other three sub-sections, it is only such combinations as unduly restrain or injure trade or commerce that are punishable criminally, and sub-section (b) relates only to those restraints which are not justified by any personal interest of the contracting parties, but which are mere malicious restraints unconnected with any business relations of the accused. *Gibbons v. Metcalfe*, 15 M.R. 583 followed.

2. None of the by-laws, rules and regulations following, although more or less in restraint of the trade in wheat, can be said to be undue restraints so as to render the parties criminally responsible. (a) A by-law providing that no member of the Exchange should pay a greater price for wheat than would allow a profit of one cent per bushel on selling to the miller or exporter. (b) An amendment of above by-law providing that no member should employ a buying agent at a country point when the business done would not justify paying the agent a salary of at least \$50 per month. The object and purpose of this rule was to save expenses and loss of commissions to the members, and not to lessen the prices paid to the farmers, and such prices were not thereby in any way diminished. (c) An agreement that offers would not be made to buy wheat at country points during the market hours on the Exchange (9.30 a.m. to 1.15 p.m.), but that the closing prices should be immediately telegraphed to all points, on which basis track wheat might be bought at those points until the opening of the market on the following day. To avoid the expense of multiplying messages and to insure the prompt receipt of market quotations at country points, a member of the Exchange was employed to wire the prices at the close of the market. There was no doubt that this had been fairly done and that the prices wired were not only just, but were the highest that could then be paid for grain based on Fort William values. The farmer had other ways of selling his wheat even during market hours, and the agreement was no undue