The law regards that as *necessary* which the common sense of the country, in its ordinary modes of business, regards as necessary.
The term "worldly employment" in the act, does not include the means of conducting and attending the public worship of God, nor those domestic employments of the family that pertain directly to the proper duties, comforts and necessities of the day.

Certiorari to Hon. Henry A. Weaver, Mayor of Pittsburgh.

The facts of this case sufficiently appear in the opinion of the Court.

Argued, Nov 18, 1859, by McKnight and Carnahan for Plaintiff in error, and by Williams and Howard, contra.

Opinion by Lowrie, C. J.,

The technical formalities of an old summary conviction are much beyond the ordinary skill of justices of the peace in this country; and for this and other reasons, some parts of them have been much condemned in modern legislation. But it is still essential that a summary conviction shall contain a finding that a special act has been performed by the defendant; and that it shall describe or define it in such a way as to individuate it and show that it falls within an unlawful class of acts. Without this, a judgment that the law has been violated goes for nothing.

Now, this is not a formal or technical rule of summary convictions, but a most essential and substantial one. No citizen could have any sort of protection against the wickedness or ignorance of inferior magistrates, if these were authorized to convict citizens of offences, and yet allowed so to record their proceedings that the very act done cannot be ascertained, and thus their judgment cannot be tested by their judicial superiors.

The most common purpose for which inferior tribunals are reviewed by their superiors, is in order to correct their erroneous application of law to ascertained facts. But when the record contains no definite facts, but only a legal conclusion from unrecorded facts, the superior court cannot, without compelling a return of the evidence, or taking testimony of what it was, decide whether the legal conclusion, that is, the conviction of the offence, is right or wrong. In such a case, for the safety of the citizen, they usually reverse the conviction, simply because no act appears upon it that justifies the judgment. And this rule applies not only to summary convictions, but to indictments and trials by jury in the higher courts, and generally even to judgments in civil actions there. A sentence is reversed if the records do not show the commission of a well defined act that is forbidden by law.

Now let us see what act the defendant here is found to have committed. He is convicted, leaving out redundant words, of having "performed worldly employment, by driving, on Sunday, a carriage in which were certain persons, not travellers, the same employment not being a work of necessity or charity."

Nobody supposes that driving a carriage is ever, by itself, a work of necessity or charity, though it may be a means by which all sorts of works, including those of necessity and charity, are performed. We, therefore, for the sake of simplicity, throw out these words. The words "worldly employment," are the magistrate's judgment concerning the fact, and we leave them out, and then we have the definition of the naked Act, thus: Driving a carriage on Sunday with persons in it who were not travellers. Does this description contain all the elements of an offence against the law?

It will be seen at once that if the defendant had been driving his own family to church on the Lord's day, he would have been *doing* the very act that is here charged. If, then, this conviction stands affirmed by us, it will be equivalent to a decision by this Court that a man cannot drive his own family to church on the Lord's day without transgressing the law; because he will be driving on Sunday a carriage with persons in it, who are not travellers. For anything appearing on this record, the defendant has done no other or worse act than this, and of course this conviction must be reversed; for no sensible man supposes that the law *forbids* such an act.

But we must not dismiss this case thus summarily. The magistrate did not truly record the act done, and declined to send up any correction of his record. But we do not need to discuss his duty in this regard, for the counsel on both sides admit the only elements of the act that were wanting. According to the truth the conviction ought to have found that the defendant, as a hired domestic servant, drove his employer's family to church on the Lord's day. Is this an unlawful act?

No member of this court has any doubt or hesitation in saying that it is not. No man having a reasonable respect for the ordinary customs and usages of the country could ever originate a doubt about it. Since the settlement of the country we have had substantially the same law upon this subject; and under it this sort of act has always been deemed lawful, as is shown by the fact that it has always been practised, and that its lawfulness has never been questioned. And surely the uniform practical interpretation of a law for near two centuries, is an argument that is worth more than hours of refined criticism and analysis of its phraseology. It is the expression of the common sense of the country, and therefore the argument which common sense most readily appreciates.

We repeat, therefore, that men who respect the common sense of the country could not originate a doubt about the lawfulness of the defendant's act. They might confuse themselves by substituting their interpretaion of a divine law on the same subject, in place of the civil law, which alone can be judicially applied, or they might be embarrassed or perhaps misled by objections and arguments invented or retailed by others: but this is only because they have not so studied the subject as to be ready with an answer. Usually, the best argument in favour of a given interpretation of an old law is to point to the usages of the country in its favor. Minds, respectful of society, admit such arguments cheerfully. Minds that have no such respect, need to be educated over again, rather than argued with. Applying the argument from common usage to this case, this conviction is very plainly erroneous; whether it means to say that a man cannot drive his family, or a hired man, his employer's family to church on the Sabbath.

And although an analytic argument is always weak and wearisome, and a long one can never have the force of a short one that is comprehended, we think that it can be perfectly and clearly shown from the purposes and terms of the law, that it does not include the act here charged. We cannot do this without using more words than we like to trouble people with; but we shall be as saving of their time, as our own time will allow. We shall, for the sake of clearness, drop all redundant words, even in quoting acts of Assembly. The discussion will add clearness to the convictions derived from the argument founded on general usage.

Let us inquire *why* people are forbidden to carry on their worldly business on the Sabbath. Our brother Woodward has already shown that it is in order that the people may devote the day to rest and to the worship of God, (9 Harris, p 432; 10th id. 111.) Our first law on this subject, was the 36th of the laws agreed upon in England, May 6th, 1852, which declares the purpose to be "for the ease of creation, and that people may better dispose themselves to worship God according to their understandings." The very first law of the first General Assembly of Pensylvania was on this subject, and was passed at Chester, December 7, 1682. It declares that "for the ease of creation, people shall abstain from their usual and common toil and labour, that they may the better dispose themselves to read the scriptures of truth at home, and frequent meetings of religious worship." This law was re-enacted in 1700, and again in 1705, in nearly the same words. These re-enactments were, doubtless rendered necessary by repeals in Council. The English Statute which served, in some measure, as a model for all these, was passed in 1676 (29, C. 2 c. 7,) and goes much further, for it *requires* people to observe the day "by exercising themselves in the duties of piety and true religion, publicly and privately."

We should, no doubt, differ very widely in our modes of expressing what ought to be the purposes and reason of the Sabbath as a civil institution. Such differences are inevitable; for people always know their moral and physical wants much better than the remedy for them. They must have institutions according to their wants, whether they can give philosophical reasons for them or not. And so long as they are unable to distinguish clearly between religion, morality, and law, it is of their very nature that their political institutions must be more or less theoretical or religious. No number of rational principles, set in array of bills of rights, can prevent this. The natural order of events cannot be arrested by such barriers.

We are not forgetting that the public acts of our Pensylvania ancestors abound with declarations in favor of liberty of con-