

Argument - of defense

2 Reppin -

State & Carver - 4 Dec, + 13th 878

142 cuts } " " Heathcocks - 7th Dec 872

Reg. " " Imulton, Hubbs + others + Blenheim's Rep. -
p 1250

35 Creek Road -

411 Cornub State & James Paulsen -

1 - Dec + 13th 195 -

Reed

State of North Carolina Superior Court 3

State

Fire Clapp

David Sagle

J. G. Whurton

Alphaygo Clapp

John Sagle

Rufus Sagle

John E. Clapp

Harrison Stewart

Geo. Clapp

Witnesses for State

Rev. Geo. W. Welker

Wilmington
Hillsboro
Fayetteville
Greensboro
Raleigh
Durham
Charlotte
Spartanburg
Asheville
Salem
Winston-Salem
High Point
Concord
Fayetteville
Greensboro
Raleigh
Durham
Charlotte
Spartanburg
Asheville
Salem
Winston-Salem
High Point
Concord

Brick Church in County - has been pastor of congregation for 28 years. Almost have 2 communions. Spring + Fall. Last year Spring Comm - for 2 weeks in April - for pre-punton services + Consistory for official business - went upon that day 18th April, took wife + saw some turbulence, when near church was met by Joe Clapp, David Sagle, Alphaygo Clapp, J. E. Clapp, some 60 or 80 feet from the only door which was open. Other doors shut - wife not just with me. Parties said they had come to settle the matter about B.C. they claimed a part of the property, and called a part of the title - I understood them to say they represented the others who were there with them. This they said must be settled and there before every services could be held that day. Reported that I was not a part of Ch. + had no interest in its property. They insisted. I reported the same to the town + county Registrar for record.

for themselves, but though no compromise
under ~~or~~ circumstances - They prepared
to argue their rights, declined -

D. L. Walker asked some questions to which
David Inge answered - Considerable excitement
arose. Lucius left expecting a fight - All
unexpected - Dan Walker asked Clapp some
question - don't recollect what - D. Inge
replied - in an excited and angry manner -
A disgraceful altercation ensued - Great alarm
and trepidation among ladies - Had serious apprehensions
that there would be a violent outbreak
gracious Clapp said that as their conditions had not
been complied with we could have no services there
that day - When trouble seemed imminent John and
Rufus came up very close - Their father said he
was an old man and would not fight but had
sons who would - Clapp said we would have to go into the
Church by force - Shortly afterwards separated
and went to our homes - Did not return next
day - Saw certain persons - Geo Foust, Amos
W. Huston, H. May, Alex May, H. Stewart, F. J.
Clapp (sometimes at door) In and about door
and steps of my door which was open - Saw nothing -
Parties named - I never been member - Geo Clapp -
H. Stewart + H. May. - None of them have
for his years have met or worshipped or
exercised rights of members in this church -
Not since 1860 I think - Always have meeting of
Elders + Deacons on Sabbath before now - Always
preaching that day -

C. X - do not know that I have seen Stewart
before for many years -

David Huffman - Remember the time - I spoke
 of - At meeting at Sittenville -
 Jeremiah Clapp - asked me if I was going
 to the meeting at Brick Church - on the
 next Saturday, the day before communion.
 Think it was on Tuesday before that Saturday -
 Told him I was not - & asked him why. He
 said they were going to contend for their rights in
 the church - Told him I would have nothing to
 do with it - The Saturday he spoke of was the day
 he spoke of -

Ch X

There was a split in the church and both
 parties claim the property - Am still a mem-
 ber - Most of these defendants were members
 and set up the same claim - (J. Clapp was
 a member - to Hugh J. Clapp - Green
 Wharton P. Ingle, Geo E Clapp - #9

H: Stearns & Heard & many were not -
 Heard not attended preaching there since 1860
 I did not know us any of these parties
 have been there at all since then. They were
 accustomed to attend before that time -

Geo. W. Foust - Told J. Clapp - passed by and
 asked if I was going to a meeting to be held
 at B.C. on Sat. I asked why. He said
 They were going to offer a compromise and
 if it was not accepted they would tell him
 he could not preach there - That they claimed
 part of the property & if they could not
 have the part of the line who show - &
 leave there - Considered myself one of that party

+ was anxious for a compromise -
 Started home with H. May, to leave first -
 Cut down on leaves at corner of grave yard -
 Had conversation before near the Church with Gen
 Clapp A. G. Clapp, S. L. Clapp - Alex. May
 Henderson May - S. G. Wharton ~~was~~ present -
 Something said about how to proceed. Took a vote &
 was carried not to close doors - went off & came
 back and sd to S. G. Wharton, what are you
 all up to. He sd - a Comm. had been appo-
 inted to offer comp. & if not accepted
 to say to Walker that he could not preach
 in house that day - save the committee ad-
 vance towards Mr Walker -

When I came back all those in the bill of
 indictment except Geo Clapp of York were
 on the ground - did not see him, S. G. Wharton
 had a stick in his hand Dan F. Clapp Dan
 id. Sibley & Daniel Walker - All I saw with
 sticks - Only one door open when I came back
 Mr Wharton sitting on top step - Grave yard walk
 near and several on that. Think all those
 indicted were about the door or inside -
 at the time committee approached Mr Walker
 They were from five to fifteen feet from the door.
 C L

At first announcement, there was nobody present
 except our party - This was between half an
 hour and an hour - Some of us had been in
 church - The party there had not all agreed to
 defend the church - Did not then claim to be a member
 of the congregation - There had been preaching on
 here on two occasions - There has been by
 Mr Walker -

Don't know whether H. Stewart was there
 before ~~the~~ the committee was ap-
 pointed or not. Think he came home but
 saw him there. He was there when Mrs West
 her came - ~~but~~

R. Exp -

Went to the Consistory of two members
 of thereof and asked permission and got
 it. I was going to all official members
 and they said it was not necessary -
 Do not know that there had been
 any other services there except at my
 daughter's funeral - Have frequently heard
 Mr Walker preaching there -
 Have heard him pretty regularly until within
 12 months -

There was quite a crowd some
 20 yds from door which was open, who did
 not belong to this party, Geo Sibley had been
 there before vote was taken - They were people
 who were in the habit of attending church
 there -

Guiney Frost - was present - Think I was invited to be pre-
 sent by Mr Wharton or Gen Clapp - S. G.
 present that day to compromise or attack -
 saw then S. G. Wharton Dan Sibley Geo Sibley Rufus
 Sibley A. G. Clapp - G. Clapp - Gen & Clapp -
 J. Clapp, Alex. May, Henry May, J. Clapp, J.
 John J. Clapp - J. Clapp & William Clapp
 Jeremiah Clapp - Came up about the time the
 left. There were several persons in a group with
 Dan Walker, Dan & Rufus Sibley, Daniel
 his brother Dan Sibley and

The English were undoubtedly angry - Heard Shepherd
say to - English that he did not come here for a quarrel
and he would not - and then went off -
Some of them were standing around the door and
Saw - F. Clapp, F. L. Wharton and some more had
sticks -

C. X.

These were ordinary walking sticks -
Part of them had been in the habit of walking with sticks -
Had been a member of the congregation before the
split in 1860 - A few times I know that ministers
4 here had preached there at the request of our party -
So not know of any compromise between the parties -
Saw Stewart come up, in way on, he stopped and took
no part in the quarrel - Came not more than 1/2 hour
before parties left -

R. Cox -

Alexander Hughes such preached a funeral
sermon - This was 2 or 3 years before the time
of this action. Mr Sedball came a month or two
before this time - Preached there 2 -

Samuel Chalker - member of B. C. congregation -
Bro. of Geo. W. Walker, was present at the meeting
before communion - Got there between 10 & 11
Went toward church with Bro & were stopped -
Jeri Clapp - Geo. Lytle, C. S. Clapp, & S. Clapp -
Told Bro, they had come out for camp - He said
he was right to camp - me - That it was in consistency
Lyman Clapp proposed 1/2 the time - Bro. id
in the consistency with our camp - in an
any such times - Clapp for - id that in our

would not do that they had possession of Ch -
- would hold it - That that would end it - and we
could not go in - I asked Clapp - How is it for
and Wharton was such good friends you would
to be at act - S - Lytle - threw his hands up
in my face & id so did you - Replied -
I am not speaking to you - Lytle id
id you are a low down brute -
"Should id" said this - told him not to
put them too near, I might knock him down
id he had sons who id wipe their faces with
me - John & Rufus came up near very quiet
Mr Wharton left out in Ch soon after returned
H - Tracy - A - May - S. Lytle - Geo Lytle - R. Lytle
A. S. Clapp - Geo. D. Clapp - J. Clapp - but think
- Wharton carried stick before he has been regular at
it since S. Lytle seldom takes time to pick
up stick - Was at preaching there at regular
times before and had done so since the split in
1860 - Mr Frank asked permission to preach
Mr Hughes preach his daughter's funeral
sermon - Alexander preached by consent
do not know personally of id here preach
ing there -

Geo. Molt - was present - was with Mr Walker
Clapp - A. S. Clapp & Geo Wharton
were id he came out to make a compromise
Bro W - id not a compromise & no camp
to make & thought he id speak for church
any of id - They counted Ch - 1/2 time
I would between the Walker & Lytle camp
id here were only id of the church

Sam - did he did not know which was worst
that or a pregnant man - Quorn, Lord, & a woman
woman alarmed -

Jan all on bill except John &
Geo Clapp -
Broke up meeting -

Henry C. Clapp - was present - between 10 & 11 -

Crowd about the door Wharton & found on
doorstep & near about wall of parsonage - in
4 ft from that - I recollect some whom I knew as
being on wall but do not recollect the names - few -

Clapp Sam F. Clapp, Dr. Dingle & G. B. Clapp 8 or 10 ft
from place they were - There - so he had come to offer
compromise, Mr W did he was merely minister the
consistory did speak for themselves - He thought
he could say for them that no comp - would be
made - few Clapp & Dr. Dingle had words and got very
angry - The altercation could have been heard
by every person in the street - There was few there
in a row - Henry was a member of congregation
17 or 18 years & had been regular worshiper there
by Mr W - & his congregation since I can remember
some of def. not attended there in 1885 or before
were some of those named in def. except
S. W. Wharton

Jan for - Clapp of few - or one
on parson - yard wall -

Geo. W. Clapp Am one of consistory

Did call had no permission to preach I for-
bad him, as trustee - I was present and
know it all - Am Sat - evening my self and
Col. Clapp had fastened the doors and windows
The next morning the bars were prised off
and fire built - I do not know of his
preaching there at another time, Mr W's congre-
gation has been worshipping there since
I can remember -

Knows of no worship being held there
except these instances, from since
1860

The defendants asked the witness if the de-
fendants had not asserted a claim to the church
for a long time before the date Apr 18 1885

Witness objected to - Objection sustained
Reception taken & noted -
State Rests -

Defence introduced no testimony -
Witness testified -

Defendants Argument.

1

1- Error-

Indictments - Counts 1 + 2 defective -

They fail to cover title in the Party known as the wooden party -

3rd Count - void for uncertainty -

4th " " Defective - no averment of intent -

vs. C. Clapp & Stewart -

Clapps seen only by Henry C. Clapp -
an iron yard wall -

I - Duty of court and jury -

1 - Of Court to declare the law - duty imperative - cannot be shirked. Sup. grants a - Appeal - b - Charge must be reduced to writing and filed - Supreme court reviews -

2 - Jury to decide upon the facts - No appeal. Supreme court cannot review finding -

a - To decide according to the law and the facts - They are to decide what are the facts and apply to them the law as laid down by the Court. They are not to judge and decide what is the law.

If they were there would be no appeal and no remedy for their errors. Thus the safeguard of the law would be inefficient in its provisions to prevent evil from the error of judges in the execution of the law - would be made of no avail and the harmony and beauty of that legal system of which every citizen is so proud - would be marred - and destroyed. It is unfortunately a fact

it - I had almost said a trick - upon the part of some attorneys to endeavor to produce upon the minds of the jury

the impression that the charge given to the jury to find according to the law and the facts "evidence" given to them the right to judge of the law, to decide what is the law - knowing well that such error in their judgment of law cannot be remedied while the error of the judge can injure no one and may be remedied upon appeal - Such gentleman is not the fact and each has never been held to be the province of the jury in any court which derives its jurisdiction nearly or wholly from the Common Law of England. Such error is our law of to prevent an intermingling and overlapping of the duties of judge and jury that only express words of the law can give to the jury the right to judge of the law. In such cases the duty of the judge is merely explanatory, and the jury then take his explanation as a statement given by a sworn officer without bias, given for their consideration and to be accepted or rejected as they may see fit decide - In that case the jury stands almost upon a level with the attorney - The Court might hold toward you the language of the old Roman Emilian Securus Capi - denies - which do you believe? but is not the ordinary rule, the declaration of the Court of the law is imperative and must be accepted - Indeed, so strong is the tendency of the law in the contrary direction that many declarations for resulting from a cooperation of fact and law as jury are not permitted to decide upon. At the last term of the Supreme Court at New York held that in our law the jury are to be held

at the Spring Term the court erred in not declaring to the jury the deduction which must be drawn from certain ~~some~~ evidence offered in the case -

So highly does our law regard and honor the place, dignity and integrity of the jury that it has declared that ^{your} decision shall not be subject to review - shall be final, conclusion, decision -

The attorney who in any manner endeavors to persuade a jury that their powers extend beyond this limit, must be faithful to his client but is the enemy and decider of the honest juror -

(The first duty of a juror in a criminal case is, - To decide what is the crime charged?)
So frequently the opinion is entertained by jurors in criminal actions, that they are called upon to do justice between individuals to settle separate individual rights by their verdict - Such is not the case - The controversy is between the State and the defendants only - You are to decide whether the acts of the defendants are violation of the law of the state as declared by the Court - If so, it is a matter of entire indifference to you what are the particular rights of the persons who may be interested in the subject - another subject of the act charged as criminal - These relations cannot affect your verdict - An ordinary illustration of this fact is in cases of gross insult - the gross insult may be in words - to a man or his wife - the insult which is immediately brought

by personal contumacious - Natural justice and the instinct of almost every man, says that the act - as between the parties was right - that the contumacious was richly deserved - yet the law says that it was criminal a violation of its provisions - and how frequently is a jury called upon to render a verdict of guilty in such cases - So careful is our law that it is especially provided that no such criminal proceeding - public act shall decide private right -
To determine private right is therefore no part of your duty -

The first duty of a jury is to define in their own minds what they have to decide. In order to do so, it is necessary to inquire - What is the criminal act charged? The importance of this inquiry, is not as frequently understood - The word used ~~is~~ to designate different crimes by our law, have not infrequently been to have a technical or legal force distinct and different from their ordinary significances - These definitions must be fully apprehended in order to enable a jury to decide what are the proper deductions to be made - Not only so, but the cases in which such crimes are to be decided in bills of indictment has been prescribed and have a certain legal effect -

Conspiracy - a confederacy of two or more persons to accomplish a lawful purpose, or a law-
purpose by some unlawful means -

- 1 - Intent
- 2 - Purpose { Lawful
 { Unlawful
- 3 - Means - { Lawful
 { Unlawful

- 1 - Intent
 - 2 - Purpose Lawful
 - 3 - Means Unlawful
- } Indictable

- 1 - Intent
 - 2 - Purpose - Unlawful
 - 3 - Means Lawful -
- } Indictable

Conspiracy - Admitted

Purpose - Admitted - to prevent a law-
ful assembling of the
congregation
Unlawful

Means -

to the 1 & 2 counts of the Bill

The defendants' objection, that the illegality of the act which the defendants are charged with having conspired to commit is not sufficiently covered in the indictment. The court does not consider good - It is admitted by the defendants that the combination ~~was~~ set forth and charged in the bill was made by the defendants. It is also admitted that this combination was for the purpose and with the specific intent to perform the act charged as the objective point of the conspiracy but it is denied that this is covered with sufficient clearness as an unlawful act - i.e. an act which the court can perceive by inspection of the bill to be of necessity an unlawful act, in that it does not aver in express words that the premises where, and in reference to which the act was ^{committed} performed was in the possession of the "Brick Church congregation" or that they were the rightful owners thereof, or that the defendants were in ^{not} possession or being in possession ~~were~~ so wrongfully and against the legal owners - The indictment charges that the persons named in the bill, "did conspire confederate and agree ~~to~~ to prevent and hinder a certain con-

State
or
Claps of the

CHAUTAUQUA COUNTY NY HISTORICAL SOCIETY 2013

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gregation of many persons from lawfully
assembling and meeting together for religious
worship in a certain meeting-house called
Brick Church " &c.

There is no doubt that the mere statement
of a confederation to accomplish an
unlawful act, without any description
of the act itself is insufficient in law for the
reason that the defendant is not thereby ap-
prized with sufficient distinctness of the
act charged against him - The term "unlaw-
ful act" might have a thousand different
meanings, might refer to ^{any one of a} hundred dif-
ferent acts of the defendant. From this
however it does not follow that the word
lawful or unlawful as applied to the acts
of other parties may not limit and de-
fine the act of the defendant in contravention
thereof, with sufficient clearness,
and precision. It is sufficient to aver
that a mob gotten up "to prevent the legal
electors of a certain precinct from voting
at a poll lawfully holden therein" on a
certain day & so too it is sufficient to aver
in a conspiracy to cheat and defraud A. B.
that the object-matter of the cheat and fraud was
"his property" without specifying the peculiar
character of his ~~property~~ ^{interest} in the same.

The reason of this is that ⁱⁿ the one case the electors could only hold "a lawful poll" by authority of some statute, - and in the second instance it could only be his property by virtue of ownership. So too in the present case, it is charged that the defendants conspired to prevent and did prevent certain parties from "lawfully assembling" at "etc." The parties specified could only lawfully assemble at that place, by reason of the right of possession vested in them. There is no indefiniteness in the allegation. The defendant upon reaching this court knows ex instante that if he can show that said parties were not lawfully assembling, or in other words that they had not the legal title, the right of possession or possession itself that they must stand acquitted -

State
of
New York

Oranford
1887
Deputations
Church Property

CHAUTAUQUA COUNTY NY HISTORICAL SOCIETY