

OXFORD ASSIZES

The Mayor and Corporation of Oxford v. Farriday
Before Mr. Baron Vaughan and a Special Jury.

This was an action brought by the plaintiffs to recover from the defendant a compensation in damages for trading within the limits of the City of Oxford, he being disqualified from so doing by not being a freeman of the said city.

Counsel for the plaintiffs, Mr. Taunton (the Recorder of the City,) Mr. Serjeant Russel, and Mr. Cross. Attorney, Mr. Percival Walsh, the City Solicitor.—Counsel for the defendant, Mr. Jervis, Mr. Serjeant Ludlow, and Mr. Talfoud. Attorney, Messrs. Clift and Fisher, of Gray's Inn.

Mr. Cross opened the pleadings.

Mr. Taunton stated the case to the Jury.—They had heard from the opening of his friend, Mr. Cross, the general nature of this action, and it was his duty to state the particular circumstances under which it was brought, and the grounds upon which it was to be maintained. It was brought against the defendant for invading the custom of this city by bringing his goods there, and disposing of them by sale, he not being a freeman, but being altogether a stranger to the place. The action was brought simply upon the *custom*, and the plaintiffs would be satisfied with a nominal verdict, their object being not to get pecuniary compensation, but to tablish the custom. An action of this sort would not lie, excepting where a custom has prevailed from time immemorial. Some times actions of this sort, or having in view the same object, were brought upon by-laws, which inflicted a penalty upon offenders; and there was a time undoubtedly in the history of the law when it was supposed that a right of this sort could only be enforced in an action to be brought for the recovery of the penalty. That notion, however, had long been repudiated by the Learned Judges; and it is now perfectly settled and fixed, that where a Corporation is possessed of such a right as the present (and it must be upon immemorial custom) the Corporation may proceed in a special action in the case, as it is called, to recover damages, and thereby try the real question, namely the right of the Corporation. Having thus stated the nature of the question, the Learned Counsel said, it would now be necessary to go back to very remote periods of antiquity, in order to establish the immemorial usage. The City of Oxford is a very ancient city. The Corporation of it, also, is very ancient—so ancient, that he could not call to mind any instance within his own knowledge in which the antiquity of a Corporation could be attested by charters of such remote antiquity as exist upon the present subject. In many instances it is a matter of inference from either circumstances and not capable of positive and direct proof, that a Corporation had existed from time immemorial. It was hardly necessary to state that the time of legal memory was the reign of Richard I, who ascended the throne in 1189, and retained it until 1199. When, therefore, we talk of an immemorial custom, we talk of a custom dating its origin from or before that reign. In the present instance, it would be proved that the City of Oxford received a Charter from Henry II., which Charter referred to liberties and franchises that existed in the reign of Henry I. This Charter of Henry II. was attested in what is called an *Inspeximus* Charter of Ed-

ward I. The meaning of an *Inspeximus* is, that it is a Charter in which the Monarch granting it states—"We have inspected and viewed, &c." and then it recites all the other Charters at length, which have been granted to the Corporation in question by all preceding Kings. Now this Charter of Edward I. recites all previous Charters granted to the City of Oxford; and, among others, one of Henry II. which the Learned Counsel read, and in that, Henry II. said,

"Know ye, that I have granted and confirmed to my citizens of Oxford all their liberties and free customs which they had in the time of King Henry my grandfather, especially their *Guild Merchant*, with all their liberties and customs, and the lands, isles, pastures, and other appurtenances, so that no one *who shall not be of that Guild* shall make any merchandize in that city, unless as was used in the time of King Henry my grandfather. Moreover, I have granted and confirmed to them freedom of toll and passage, and all other customs through the realm, as well as by land as by water;"

and then it went on to confer the dignity, that the Mayor of the City of Oxford should be present and assist with the Mayor of London at the King's Butlery on all Coronations, which custom has prevailed down to the present time, whenever that august ceremony takes place; and it also conferred all the same usages and customs that are enjoyed and observed by the Corporation of the City of London. So that here was a positive grant by King Henry II. (referring to the time of King Henry I.) of a *Guild Merchant*; and that no one, unless he was free of the City, should make merchandize therein, which meant, carry on any trade within the city, or its suburbs. There was also a Charter of Henry III. the terms of which were not necessary to be recited, because they were almost identically the same with those of the Charter of King Henry II. There was another charter granted by King Henry VI. and it was a Parliamentary confirmation of all the Charters which had been theretofore granted. Another Charter is one of the 3d James I. also a conformation of all former Charters, and giving the name and style to the Corporation of "the Mayor, Bailiffs, and commonalty of the City of Oxford, in the county of Oxford," and this is the present governing Charter. These bring the Charters, or the most material of them, If there were no other evidence to prove the custom they would be sufficient; because they were in the express words of the Kings of England, so plain that they could not be mistaken, grants of a custom which by time had ripened into what was called an immemorial custom. But the case did not rest here, because other documentary evidence would be produced showing what had been done at various periods, in order to enforce the custom. The Learned Counsel then proceeded to read entries in the Corporation Books of matters and things done, enforcing the custom, and shewing that at various times persons who carried on trade within the City, not being freemen, were compelled to take out their freedom, or else remove. It would also be proved, by living persons of great age, that not only by tradition, but by their own personal experience, the custom alleged had existed from time immemorial. It happened in 1794 the custom came under discussion, and it was enforced against a person of the name of Taman, who had set up a shop without being free; and when the question came to trial, before Mr. Justice Heath, the custom was affirmed by the verdict of a Jury, under the direction of that Learned Judge. Ta-

man was a person who had been matriculated by the University; and here it was necessary to state that an exception to the custom existed, which was, that all persons matriculated by that Learned Body were allowed to exercise the particular calling or trade for which they had been matriculated. There was at one time a collision between the University and the Corporation of the City; but those jealousies, or whatever they might have been, have now subsided, and, as the Learned Counsel hoped, would never be revived. A greater tone of literality exists now, and he (Mr. Taunton) was happy to say that the two Bodies were likely to on in harmony and peace. In the case alluded to, Mr. Taman had been matriculated to the trade of a Barber, but he took upon himself to exercise a great many other trades; and the question then arose, whether a man matriculated for one trade only, not being free, was allowed to exercise any or all other trades besides? That question was tried, as had been before stated, and the custom was affirmed. Upon the present occasion, an exemplification of the judgment in that case would be given in evidence, and would prove that no doubts now existed on that subject; and, he felt convinced, never would again. There were, however, it would seem, some persons whom no judgment of law, and whom no argument of reason could convince, and of such was the present defendant. The conduct of that Gentleman, which had exposed him to the present action, was this; he came into this city, in the month of December 1820, with a cargo of earthenware, manufactured in Staffordshire, where, for any thing the Learned Counsel knew, the defendant was, as he alleged, the partner of Messrs. Mason, who manufactured such articles. He came with a person of the name of Boag, and in this city they not only acted as traders, but as itinerant auctioneers. First of all, they took up their quarters in St. Clement's, which is out of the liberties of the City, probably knowing of the existence of this custom, and not choosing to incur the consequences of an action. But they were routed from thence by interference of the County Magistrates, under the Hawker's and Pedlar's Act. Driven from the suburbs, the defendant though fit to take up his quarters at Mr. Wyatt's, the carver and gilder, in the High-street, where he issued placards announcing "an *imperative* sale" of his china. The learned Counsel had heard of a *peremptory* sale, but never of an *imperative* sale before. It is quite a new word; but one meets with innovations in the poor English language every day; and it might be very believed that the whole language would become so completely sacrificed to the zeal of modern innovators, that a century hence the writings of Addison would be unintelligible to his countrymen! There, however, the sale of this china was conducted by the defendant, notwithstanding he was warned that it was illegal; and for this infraction of the rights of the freemen, the present action was brought. It was so brought by the City Authorities, not only for the preservation of their own franchises, but as trustees for their fellow citizens. No doubt it would be said, that his action was a very hard one, because the defendant had applied to take up his freedom, and his application had been rejected; but the fact was, that it was never the practice of the Corporation to grant the freedom of the city to non-residents. The Learned Counsel did not mean to say that the freedom of the city had not been granted to such distinguished persons as the Duke of Wellington and Lord Exmouth; but he meant to say that it had not been the practice of the City to grant it to non-resident persons, for the purpose of carry-

ing on trade. The Learned Counsel had the honour of being an officer of the City himself, and though it came out of his mouth, he would not be deterred from saying, that in his conscience he believed, that from one end of his Majesty's dominions to the other, in no Corporation was the business carried on in a manner more creditable or more honourable to the authorities that presided, than in the City of Oxford. They held privileges from grants of the two Henries, and other Kings of the highest importance, and co-ordinate in all respects with the privileges of the City of London; and it was a matter of no slight importance to the freemen of this City that those privileges should be preserved. There was only one other topic to which it was necessary to allude. It might possibly be proved that this custom had not been enforced in every instance to which it might and Heaven forbid it should. There might be instances brought forward where poor women had not been visited with the pains and penalties of trading without being free. Probably persons in an obscure and humble situation of life and been passed over, because they were not of sufficient notoriety to excite jealousy or create alarm; but, because the Corporation might have acted with grace and indulgence, that never could be a ground for saying that they had abnegated their own rights. One single instance in which the custom has been enforced, weighs against ten thousand instances where the Corporation had forgone, rigidly insisting on their rights from motives of humanity. Having thus briefly stated an outline of the case, sufficient to render the evidence intelligible, the Learned Counsel felt convinced that the verdict of the present Jury would ratify the rights of the citizens as they had been confirmed by the verdict of another Jury in 1794.

Henry Jacob, examined by Mr. Serjeant Russell.—I am the Town Clerk's clerk of the City of Oxford. I know the defendant. I saw him either on the 12th or 13th of December last, at Mr. Angelo's fencing room, behind Mr. Wyatt's, in the High-street, and served him with a notice, telling him that it was illegal for him to carry on his sale of china there. He said he had taken the best advice, and he should proceed with the sale; and he did so. The china was in the room.

Mr. Jervis—I admit the fact.

Mr. Thomas Roberson, Town Clerk, produced all the Charters above alluded to from the Muniments of the Corporation.

Mr Illingworth, from the Record Office in the Tower, examined the originals, and read their translations.

Mr. Jervis objected that in several of them Oxford was called a Town, and the inhabitants Burgesses, which proved that Oxford was not an immemorial City, nor were the inhabitants immemorially Citizens, as was averred in the declaration; and he contended that his was a variance on which the plaintiffs ought to be consulted.

Mr. Taunton answered the objection by pointing out that in the first-mentioned Charter, before the time of legal memory, Oxford was called a city, and the inhabitants were called Citizens; and he then re-called Mr. Illingworth, who stated that in ancient Charters the terms "Burgesses" and "Citizens" were used synonymously.

Mr. Baron Vaughan over-ruled Mr. Jervis's objection.

The plaintiffs then entered upon another head of evidence, to shew, from the Council Books of the Corporation, that various entries were made therein, ordering proceedings against traders who were not free, who afterwards came in and took up their freedom. This head of

evidence occasioned much discussion, and the Learned Judge expressed his intention of admitting it; but saying he should do so with some difficulty, the plaintiffs' Counsel determined to withdraw it.

The Town Clerk then produced an exemplification of the judges in Mr. Taman's case, referred to in Mr. Taunton's opening, as evidence of the verdict in that case.

William Slatter, Esq. was then called and examined upon the *voire dire* by Mr. Jervis, in order to ascertain whether he was not a Member of the Corporation, and as such, would have an interest in the present question, which would disqualify him from giving any evidence; but Mr. Slatter stated, that he had been disfranchised, and his evidence was received as follows:—I am near 70 years of age; about three and forty years ago I attempted to settle myself in Oxford as a baker. At that time I was not a freeman of the City; an application was then made to me by the Corporation to take up my freedom, as they would not suffer me to trade until I had done so. In consequence I came to the Town Hall and took my freedom up, and paid about twenty-three shillings for it. As I was entitled to it by my father's copy, I only paid the ordinary fees. I then carried on business in the city for three or four and twenty years. For the last ten years I have retired from business altogether. I have also been an Assistant and have served the office of Mayor of the city. I have also been a Member of a Committee of the Council called the Committee of Trade. The principal duty of that Committee is to receive reports from the officers of the City respecting persons carrying on trade, who are not free. I know of instances in which persons have come here, and carried on trade without being free, and the Corporation have instantly objected to it, as a contravention of the custom. I recollect one instance, in which a person of the name of Royston set up business opposite this Hall. He was not free, and it was immediately objected to. In consequence of that, the name of Willsmore, a freeman, was put up; but that was also objected to, because that freeman lived in London. After that one Stokes came; and then a person named Clarke, and he was objected to, because he had not taken up his freedom. Both these persons afterwards took up their freedom. I have known many other instances of the same description. In the whole course of my experience. I do not recollect an instance of the freedom of the City being granted to a non-resident trader. I remember actions were brought to compel several persons, at different times, to take up their freedom. [These persons were named, and the writs were put in by Mr. Walsh, the plaintiff's attorney, and read by the Officer of the Court.]—In the course of along examination, the witness stated the names of a great number of persons, not in very good circumstances, who had been called on by the City, and taken up their freedom; and upon his cross-examination, mentioned several persons who had carried on business without taking up their freedoms, and without being matriculated by the University. If they were poor, time was given them. There were certain trades, such as perfumers, stationers, apothecaries, and others, to which the University generally matriculate, and with which the Committee of Trade did not commonly interfere.—In re-examination, the witness aid that women, and other persons in indigent circumstances, were overlooked in many instances, when the Committee of Trade ascertained they were unable to pay.

Mr. John Loder was next called, and at first cross-examined on the *voire dire*, to ascertain whether he had not an interest in the question, as being a Corporator; but he stated that he had been disfranchised about a week or ten days.

Mr. Serjeant Ludlow inquired very strictly how "the operation of disfranchisement" was performed upon the witness, which excited that merriment which the Learned Gentleman's cross-examination usually create.

The witness went on to give evidence.—I am 71 years of age. I am the son of William Loder, formerly a freeman of this City, but now dead. I have heard from him that the custom was that none but freemen—

Mr. Jervis here interposed, and objected to the reception of hearsay evidence, proceeding from that which had come out of the mouth of a deceased interested person, who could not now have his declarations rendered receivable by disfranchisement.

Mr. Sergeant Russell, after some little discussion, said, he would not proceed with the evidence of this witness, upon this particular point, as the case of the plaintiffs was simply strong enough in other respects without it.

The witness proceeded.—I had a brother named Wm. Loder, who practiced as a barber, and process was issued against him for not taking up his freedom.

The writ against William Loder was here produced and read.

Cross-examined by Mr. Sergeant Ludlow. I have carried on business in Oxford ever since the year 1796. I am not a Member of the Corporation. I have heard of the Committee of Trade. I have known several persons carry on trade in the City who were not free, but they were matriculated. It is not a part of the custom that every person matriculated can carry on every trade. Some trades they might carry on, and those whether they were free or not. As long as I have known the City, that has been the custom. I have known women who were the widows of freemen carry on trade, and also other women who were not free, keep apple shops and gingerbread shops, and such like. I have known that all my life. The witness then, in answer to several questions, stated, in substance, that several poor people had carried on trade within the city, though they were not free. He had also seen persons come to a particular Inn to trade, and had seen them pack up and remove when the City Officers interfered with them.

Mr. Jervis here submitted, that the custom laid in the declaration, that freemen, persons matriculated, and freemen's widows were alone allowed to trade in the City of Oxford, was clearly disproved.

Mr. Baron Vaughan thought the point was established, because the humanity of the Corporation, in suffering indigent persons to trade without taking up their freedom, could not be construed as an acquiescence in the infraction of the civic rights.

Richard Mallam was next called, and examined on the *voire dire*. He was now disfranchised. Previous to that had been a freeman about thirty-five years; the witness set up business in Oxford thirty-five years ago. When the witness set up business, the Mayor sent for him, and desired him to buy his freedom, or else they would shut up his shop. In consequence of this he took up his freedom, and paid 20s. 12s. 10d. for it. He had known instances of persons being interrupted in trading by the Corporation, in consequence of not being freemen. In one instance, about five and thirty years ago, some china was put up for sale at the

Chequers, and the Sergeant at Mace went down, seized it and brought it away. Upon another occasion, when the witness kept the Blue Boar, some pictures were brought there for sale by a person who was not free, and that sale was instantly stopped by the Corporation, and in consequence, the pictures were removed to St. Clement's, which is out of the City, and there the sale took place.

Mr. Hardy examined by Mr. Taunton.—Forty-seven years ago I came and set up the business of a mercer in this City. I was not a freeman, and I was immediately applied to by the City Authorities to take up my freedom, which I did. I afterwards went into business with another Gentleman who was not a freeman. That was the present Mr. Alderman Cox. I was called upon to name my partner, because I had only put up "Hardy & Co." When I named Mr. Cox, he was compelled to take up his freedom. I should think he paid for his freedom twenty guineas, besides the fees of office. After that I continued to carry on business for about thirty years.

Q. What has been the reputation with respect to a custom existing as to persons carrying on trade within the City of Oxford?

A. When any persons came in and opened a shop, they were always immediately called upon to purchase their freedom, the same as myself.

Q. Have you known several instances in which that has occurred?

A. Several instances of that description occurred during my own Mayoralty. [The witness named the individuals.]

George Neal, one of the Sergeants at Mace, deposed, that it was in his department to report to the Board of Trade when any persons set up in business who were not free, and they were obliged to take up their freedom, unless sufficient reason was given why they did not. Witness had by order of the mayor been sent to stop the sales of several persons who had at different periods announced their intention of offering goods for sale in Oxford. The witness stated that he knew some persons who carried on trade in the market, without being free; but, when they did so on days which were not market days, they paid more. Witness was aware there had always been exercised by the Corporation a discretion touching the admission to the freedom any persons who applied for it. Recollects the Corporation refusing the freedom of the City to Mr. Costar, coachmaster.

Mr. Baron Vaughan—I should like to know what is to be the line of defence; because, sitting here, I can hear the Jury say, "we have had this over and over again." I have no difficulty in saying, that in my opinion that which was allowed to on by the Corporation from motives of charity and forbearance cannot be take for an authorized trading.

Mr Taunton declined calling any more witnesses.

DEFENCE

Mr. Jervis addressed the Jury for the defendant. He said he hoped to be able to satisfy the Jury that any such custom as was here set up was contrary to the ancient policy of the law, and was such as was not much favoured in Courts of Justice. Unless it took its origin from very ancient time, namely, in the reign of Richard I. its existence could not be tolerated for a single instant. It was perfectly clear in this case, that the custom could not be such as was asserted in the declaration; and though the Record in the case of the Corporation of Oxford v. Taman, was evidence, still it was only what could be called persuasive

evidence. It was like the recovery in a former action of ejectment; but the present case was not between the same parties, and in fact in this case, the supposed rights of the City were laid much more widely, and were not supported by evidence. As the evidence at present stood, the Learned Judge was of opinion that Oxford had been proved to be an immemorial City; but the Learned Counsel would produce in evidence a Writ and a Return to Parliament in the 6th of Edward IV. which was the year 1407, whereby it appeared that Oxford was not even then a City, because it stated the Return of two *Burgesses* to serve for the *Borough* of Oxford; and in addition to this, a Charter of King Henry VIII. would be produced, by which Oxford had been for the first time erected into an Episcopal See, having been formerly part of the Bishopric of Lincoln. Beyond this it was most clear, that the custom was not provide; because the custom, as laid in the declaration, was, that no person should carry on trade unless free of the City, or matriculated by the University To this there was an exception, which was completely destructive of an immemorial custom; because it was clear than many women had carried on business without being either free or matriculated; and no one would pretend to say that a woman was not "a person." It was a most extraordinary circumstance in this case, that two informations had been exhibited against the present defendant, under the Hawkers' and Pedlars' Act, which informations had been actually quashed by the present Learned Recorder; thereby proving that the defendant could not be considered as a hawker and pedlar; but though he did not come within the meaning of that Act in one respect, he was entitled to every benefit resulting from it in another; and by the 23d section of that Act, which was the 50th George III, it was enacted, that the manufacturers of goods, wares, or merchandise, might sell their property any where throughout the kingdom. The main object of that Act was to levy certain duties on persons travelling through the country and selling goods, by compelling them to take out a license for that purpose, in order to protect the resident traders in any place; but it contained this provision with respect to the actual manufacturers or goods, who were authorized to sell their wares every where, without exception as to any place. The words of that particular section were as large as possible, and it would be proved now, as it had been before the Recorder at the Sessions, that the defendant was a partner in a manufactory of earthenware, at a place called Lane Delf, in the county of Stafford, where he and his partners employed no less than four hundred men. This would be a most complete defence in the present action, independent of the fact that the custom had not been proved to exist as averred in the declaration. It certainly was not convenient: for the Corporation to pretend that no one but freemen could carry on trade within the City, because thereby the Corporation got twenty guineas in hard cash from every person who was induced to take out a freedom. It was not a little remarkable, however, that during a period of 33 years, notwithstanding so many persons had carried on trade without being free, only one action had been brought. Under all the circumstances of the case, the Learned Counsel concluded by saying he felt confident of a verdict.

Mr. Edward Griffiths produced, from the Record Office of the Tower, a writ and a return to Parliament of the 6th of Edward IV. wherein Oxford was designated as a *Borough*, and the Members returned as two *Burgesses*. Also

Letters Patent of the 34th of Henry VIII. 1543, from the Rolls Chapel, making Oxford a Bishoprick, taking it out of the See of Lincoln, and making it a City. This was a grant "for the Dean and Chapter of Christ Church."

George Allen kept the Crown Inn, at Oxford, for eight years, and recollects many persons coming to his house during that time with Yorkshire cloths and other goods; they usually staid about two or three days at a time; some of them used to go out and bring master tailors and drapers home to purchase cloths. Witness has known Mr. Sirman, Mr. Dry, Mr. Wootten, and others, buy cloths of a Mr. Fox, who usually brought a large stock of cloth from Yorkshire. Some persons who were hatters, dealers in china and earthenware, Sheffield goods, ribbons, silks, and other traders, occasionally came to his house and he never knew any of them molested, unless they opened a shop.

Cross-examined by Mr. Taunton—The Crown Inn is in a yard out of sight of the main street: no part of it fronts the Corn Market, except one small window, and that is some distance from the pavement.

Benjamin Stokes, a clothier from Frome, came to Oxford previous to 1819 for 10 or 12 years, for the sale of his goods; he used to bring cloths and kerseymeres to the value of 200*l.* at a time. The witness used to open his goods principally in the market, and sold wholesale as well as retail; he was never interfered with by the City Authorities.

Edward Whitlock, a butcher, carried on business in George-lane for 7 years; has never taken up his freedom; was applied to six years ago to do so, but did not do it; and action was commenced against him by the Corporation, but was never proceeded in, and he has continued to carry on his business since without molestation. On his cross-examination he admitted he called on the Board of Trade, when the action was brought, and begged them to stay proceedings; he promised to take up his freedom as soon as he was able, and in consequence the Corporation did not go on against him. After that he became insolvent.

Several females, who kept shops in the city, were also called to prove that they had traded in the city, although they had not taken up their freedom; but on cross-examination they, for the most part, acknowledged that they were in indigent circumstances.

Mr. Jervis—Well, my Lord, I will now take your lordship's opinion whether we have not proved sufficient to call for a nonsuit.

Mr. Baron Vaughan—I certainly shall. not nonsuit. I shall hold that their averment is satisfied by the terms of the Charter. I think there is evidence to go to the Jury of the custom, and I do not think that any infraction of it in the way proved destroys it.

Mr. Jervis—I submit, my Lord, that the custom is completely disproved; and that whether women who are not free were allowed to carry on a trading, from the gallantry of the Corporation or from any other cause, makes no kind of difference. If they were suffered to carry on business, not being free, that disproves the custom averred in the declaration.

Mr. Baron Vaughan—I shall leave it to the Jury to say, whether that which you call a trading, and which, when examined, does not deserve the name of trading, has not been permitted from the charity, good feeling, and good nature of the Corporation. Now I observe that the Jury nod assent to that, I shall leave it to them, whether they do not think that this has been merely tolerated by the Corporation.

Mr. Taunton—It will be my duty to request your Lordship will make the sense of the Jury on the question of fact; or otherwise, I know it may be matter of objection hereafter that the sense of the Jury was not taken on the litigated question.

Mr. Baron Vaughan—The Jury are overhearing us, and I hear them say the question is, whether the custom is not proved as laid in the declaration. That shall be put to them very distinctly. It appears to me that the custom is proved very clearly, and it very rarely happens that you are able to trace the origin of such a custom to a period so remote.

Mr. baron Vaughan charged the Jury, and stated to them that the questions for their consideration were, whether the custom existed from time immemorial, as it was alleged in the declaration; and whether Oxford had been a City time out of mind. It had been objected on the part of the defendant, that in some ancient documents Oxford was designated as a borough, and its inhabitants as Burgesses; but he was clearly of opinion that sufficient appeared on the face of some of the most ancient charters to satisfy the allegation that Oxford was a City from time immemorial. The next objection taken by the defendant was, that the custom was not proved, as it was alleged, because women and other persons had been permitted to carry on business, though they were not free. His Lordship was of opinion (though that was matter for the Jury to decide) that this sort of trading had been permitted only from motives of kindness, and it ought to be considered as a connivance on the part of the Corporation at a practice which really was an infraction of the custom. With respect to the Hawker's and Pedlar's Act, his Lordship was clearly of opinion that the defendant was not within the meaning of the provisions which had been cited. A good deal had been said about the hardness of this case, and the benefit resulting from free trade; but no considerations of that kind ought to warrant the rude invasion of chartered rights which had existed from time immemorial. If he (his Lordship) was wrong in his law on the subject, he would be set right hereafter by the Court above; and he concluded by putting to the Jury two distinct questions—1st, whether Oxford was from time immemorial a City; and 2lly, whether the custom was proved as averred in the declaration.

The Jury consulted for a few minutes, and then delivered the following verdict (Sir Henry Willoughby, Foreman):—We find that Oxford is a City from time immemorial, and that it has had citizens from time immemorial: we find also on the custom for the plaintiffs.

The hall immediately resounded with the plaudits of the freemen.