

“While the whole world *seems* adverse to desert,” reputation is too dear a thing to be purchased at little cost. It comes slowly to the deserving, but it comes surely, and remains forever. In the profession of the law, as in that of the gospel, he who has put his hand to the plow and looks back, is unworthy of his calling. The harvest is reaped by other hands.

“Still to be strenuous for the bright reward,  
And in the soul admit of no decay,  
Brook no continuance of weak-mindedness—  
Great is the glory, for the strife is hard!”

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### JUDGE GALBRAITH'S CHARGE.

#### *Clarion County, Pennsylvania.*

In order to find a true bill against one charged with adultery, the grand jury must be satisfied that he was a married man at the time of the commission of the offence, and that the woman with whom the act was proved to have been committed, was the wife of another man living at the time. Per GALBRAITH, P. J.

The following Charge was read to the Grand Jury by GALBRAITH, P. J.

In the list of offences furnished by the district attorney, that will probably come before the grand jury, for their deliberation, is that of *adultery*.

It is somewhat remarkable that this offence is not distinctly defined in Pennsylvania, either by legislative enactment or decision of the Supreme Court. Our acts of assembly of 1705 and 1791, prescribe a punishment for the crime by name, but there is nothing to define what shall constitute the offence itself, and we are not aware that the point has ever come directly before the Supreme Court. There is some division and a good deal of confusion not only in the popular, but in the professional mind, upon the subject. We must therefore meet it, and determine it for ourselves with the best lights we have, on principle, and on authority elsewhere. The word itself

comes from the same root as "adulterate," which is defined in our dictionaries, in substance, to corrupt, to debase by foreign admixture, and "adultery," is defined, in substance, in most of our lexicons to be a "violation of the *marriage bed* of *another person*." By the Mosaic law, it is very clear, that in order to constitute adultery, the illicit sexual intercourse must be with a married woman. In the 20th chapter of Exodus, we have the decalogue, as announced from Mount Sinai, the 7th commandment of which prohibits adultery. In the 22d chapter and 16th and 17th verses, which is a continuation of the same authority, it is prescribed, that "if a man" (without distinguishing whether married or unmarried,) "entice a maid that is not betrothed," &c., then prescribing a punishment. This latter injunction would have been unnecessary if it was adultery, because that was already prohibited in the 14th verse of the 20th chapter, the 7th commandment. The laws are repeated again in Deuteronomy; and when we read from the 13th to the 29th verses inclusive, of the 22d chapter, we perceive very clearly the distinction in a criminal point of view, between an unlawful sexual intercourse with a married woman or betrothed, (regarded as the same) and an unmarried woman. The same distinction will be found in the laws of most countries, either barbarous or civilized. It is rather amusing to read the irregular and ingenious inventions of cruelty contrived to punish the crime against the rights of a husband in the laws of some of the old and barbarous countries. By the Roman law, a man was entirely justified in taking the life of the adulterer caught in the act of violating his marriage bed, and by the laws of England, he is so far justified, that his crime of taking life under those circumstances is reduced to manslaughter, which does not follow from the taking of life for the same act against any other relation than that of the husband. It is settled as the law of Connecticut, as defined by Swift, in his system of the laws of Connecticut, that adultery is "the carnal connection of a man with another's wife. The man may be either married or single, but the *woman must be married*, for the essence of the crime is the adulteration of the offspring, the spuriousness of the issue. If a married man has carnal knowledge of a single woman, it is not adultery, but fornication."

The present Chief Justice Lewis, in his excellent treatise on the "Criminal Law of the United States," from which this quotation from Swift is taken, says "it is believed that this is also the law of Vermont," and quotes *State vs. Way*, 6 Verm. R., 311, and refers also to the case of *State vs. Wallace*, 9 New Hampshire, 518, for the same principle in that State. Our own Supreme court in the case of *Respublica vs. Roberts*, 1 Yeates, 6, and 2 Dall., 124, have decided that the intercourse of an unmarried man with a married woman is not adultery in the man. That the decision in this case stands, not upon legal principles, but upon mere usage, is most clearly and satisfactorily shown in the treatise of Chief Justice Lewis above referred to, at page 41, and must have been decided upon the principles of the strictest construction of the criminal law so as to extend it to no case not clearly brought within it. We must take the law, then, as settled, that in order to constitute the crime of adultery, the man must be married, violate his own marriage vow or contract with his own wife. This is in mitigation of what I conceive to be the true legal principle governing the definition of that crime, as the judges themselves intimate. If left on principle alone, I would say that was adultery in both man and woman. It is certainly much more clear that in order to constitute that crime, the woman should be married. The main element of the offence, is the admixture, the corruption, that "which introduces or may introduce into a family, a spurious offspring." This cannot be done otherwise than with a married woman. The case of *Duncan vs. Commonwealth*, 4 Ser. & Rawle, 449, at first blush would seem to militate against this principle. That was a case of adultery and bastardy. The point now under consideration was not raised, and we have no history of the facts, and when we consider there are circumstances under which a married woman may be the mother of a bastard, the case ceases to be an authority to overturn a clear legal principle, and to extend the criminal law to cases not within its distinct provisions, to charge and convict one of a crime nowhere defined and nowhere decided to be that particular offence, against the true meaning of the word itself, and which the legislature have not thought proper to extend beyond its legitimate literal meaning. The eccle-

siastical courts in England having jurisdiction of all acts of this description, we can obtain but little light from the common law, excepting by analogy—cases of crim. con. furnish some light. They are frequently found by husbands against persons violating their rights in this particular, but no cases are found in favor of wives. The reasoning of our own Supreme Court in the cases of *Matchin vs. Matchin* and *Hollister vs. Hollister*, in 6 Barr, although in both cases somewhat foreign to the point we are at, are in accordance with the views we have taken, and serve to some extent to fortify what we have said. I am aware, that both in scripture and in common language, the term adultery is used as a general expression of any of the classes of incontinence or want of chastity, and is also, it may be said, of perjury, forgery and other terms, without regard to legal provision or of all the requisite elements necessary to constitute the offence. The marriage of a man having connection with a single woman may be well said to be an aggravation. It undoubtedly is so; he violates his own marriage vow, which a strict casuist might regard as a perjury in a moral case, and so it may be; and so with other offences, there may be circumstances of aggravation attending the commission of an offence of a lower grade by legal denomination, rendering it more aggravated in a moral sense than one of a higher grade in the criminal code. A larceny may be committed under circumstances which would make it a higher offence in a moral point of view, than a robbery under other circumstances. But it is not aggravation that is to determine legal definition and description of crime, all the essential requisites, the necessary elements to constitute the crime in a legal sense must be shown.

Without extending reasons further, then, we say that a charge of adultery against a man, first, on the authority of *Respublica* against *Roberts*, the Commonwealth must satisfy the jury, that he was a married man at the time of the commission of the offence, and in the second place, on legal principles, as well as the true meaning of the term itself, and respectable authority elsewhere, the jury must be satisfied also of the marriage of the woman with whom the act was committed; in other words, the man must be a married man and the woman with whom the act is proved to have been committed, a