The missing stone in the Cathedral

*Of unfair terms in employment contracts and coexisting rationalities in European contract law*

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In its notorious "arrêt sabots" from 1866, the French Cour de Cassation quashed a decision by the Prud'hommes of Saint Etienne which had reduced a penalty of 10 Francs imposed on a factory worker for having worn their wooden sandals inside the plant. The fine, we know from the Prud'hommes' decision, corresponded to almost half the worker's monthly salary. It was set in the factory's règlement d'atelier, which was hung somewhere within the factory and was binding between the parties on a contractual basis. The Cassation considered the Prud'hommes, who had decided in equity, to be in breach of article 1134 of the Code civil – in other words, they had failed to properly honour the binding force of contract. This was one of many cases through which, towards the end of the 19th century, contract law rules came to be seen as an instrument of workers' oppression.
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