

Court of Appeals; December Term 1851

The State
 or ~~Appals~~ ^{Appals}
~~Prosser and Galt called~~ } Error. — Argument
 Prosser forward from Note
 Prosser No 16.

Pinkney, also for the defendants in Error.

This court need not be told that this is a question deeply interesting to all.

If these ~~principles~~ ^{principles} attempted to be established destructive of the welfare of the people of this State, this court will not look at them with a favorable eye.

The Denumer in this record does admit all the allegations in the Indictment. — Those allegations are nevertheless false.

We have heard much of the Com. Law of its applicability to this subject. — It has been turned ^{around} twisted to any purpose. Any case may be said exactly to fit it — said that every ^{is} custos morum of the State to punish what may be deemed to be inconsistent with public policy. — public morals. — public manners.

The com. law is a vast vortex if the doctrine ^{is} not to be true. — (last long after the ^{principles} ~~principles~~ ^{of it})

The subject is capable of subdivision into
1. The question of the competency of the Legislature

2. The Return

3. The power of execution of the laws

4. Whether the Ind. ~~Constitution~~

as any law with the citizens of this State bound
to obey

The 1st questⁿ. has been ~~already~~ fully

argued. -

The 2^d. has also been ~~fully~~ argued

The 3^d. not rec^d. to be argued - wait

until it may come before the sup. c^t.

The 4th of the great question of ~~Conspira~~

This doctrine unknown to our ancestors

from Col. downwards - a profound flumbe

here - but in the Mother Country it was growing

daily - producing new fruit - bearing new rules -

not here unknown - if known it was to the

a resolution not to adopt it - for days after

cases must have arisen if any such Law was

deemed fitted to their end. There was not only
 non user but a rejection. They were not ignorant
 of it - but forbore to be executed but not fitted to them
 as freemen - by forbearing to use it is evd. of rejection.
 Evd. of their antipathy to it -

What is this law of Comp. - It is a fearful
 one in the expanded state in wh. it has been shown
 to this C. - To its utmost extent it has been insisted on
 to punish unexecuted intention. The Comp. is the
 gist of the offence - If the end is unlawful the means must
 be so. - It is the guilty mind wh. the law punishes -
 If an unlawful act meditated tho' not executed yet it
 is to be punished. Repentance makes no difference - It may
 mitigate punishment but does not insure pardon -

Then an penelact, when the force is an offence
 when connected with the offence - It is not the bare intent
 but it is the comp. of the offence wh. makes it crim. It is not
 always an intention to commit an offence is itself a misdemeanor
 no such thing as an attempt to commit a fraud is punishable
 it is only when the attempt is to violate the law itself
 An attempt to kill & murder - The firing of the pistol is itself
 an indictable offence - The refusal is an aggravation of the
 offence & makes it a higher offence. This is not the case of

Comp. - The doctrine of Comp. as attempted to be established - ^{nothing in the} ~~by~~ criminal code making a violation of the civil code a crim. offence.

+ deal as largely with violation of civil rights as the violation of the crim. code in its highest offence.

No compen to kill the King witht. overt act is comp. and the act of comp. punishable.

So falsely to indict a man - to move false pleas - ~~that~~ crim. default to be found with the law in that particular. ^{then may be} So again a sort of public policy of vital importance w^{ch} not to be violated -

But to depart from these great ends is it to be convert an action on the case into an indictment - to convert private into public wrongs. - where much to be left to conjecture and surmise? The great end of the principle to save the law from perversion of public justice -

But to extend it to cases like the present & to all such similar cases - The end will not justify the means - confine itself to its proper functions it may possibly do good - but extend it and it will not. It is incongruous to leave the act as not being penal & looking at the intention as the great offence to be punished - To call a man a Rogue - no crim. or civil action - But to enter into a comp. to circulate slander tho' no slander circulated yet it is to be punished - New breaches of trust alleged

in the Ind. They are civil actions & may be redressed in a civil mode - It is known that a breach of trust is not punishable as crim. Not paid to comp. to commit ^{it} is crim. and that too whether effected or not. - This contrary to nature and reason - It wants some thing of the law of Comp. as it stood before emigration. - The system must be taken as it has been built up in England since Emigration or they must reject it into to -

Said the mean or manner need not be stated may be indirect means - artful devices. This said to be suff. This renders it more perilous - Nothing need be stated to put the party on his guard. -

Said also Look at anc. - the glorious uncertainty of the doctrine contended - The famous ^{Latin} definition w^h has been given of Conspiracy - The first formal definition in 6 Mod. any comp^l - to do any thing - This bound up & spread itself over the whole circle of society. It forbids man to

anc. definition by Hawkins there is an interpolation - any act wrongful to ano. - not explained what meant by wrongful - prejudicial does not refer to the code whether civil or crim. This leaves it as much at large as it was before. - Many civil cases as much as their

In 13 East when more carefully consid. the definition of Hawkins declared to be false - D. Ellingbush says the law had been carried already far enough meaning it had been carried too far

He limits it to cases of falsity. - The Ind. in that case was for an unexecuted comp. - If any case came within the principle this surely was one. - Rawlins' definition is then given to the winds. - Even the distinction w^{ch} Ellenborough gives is one without difference. -

The different definitions are at war with each other they are not to be reconciled - yet these are the cases under w^{ch} the people of this State are to be arraigned & tried - sacred maxim in the law that penal statutes are to be taken strictly. No man shall be called upon to answer for an offence w^{ch} the law has not defined with explicitness to be punishable. - analogous to another doctrine that a man presumed innocent until the contrary appears. Nothing an offence when there has not been such warning w^{ch} no human being could mistake. - Compare this with the law of comp. involved in endless uncertainty & obscurity - when those who have to administer cannot agree as to what it is - It is a system built up such as it is in the worst of times & for the worst of purposes -

Look at the cases produced. No human intellect can come at their meaning - Judge

making war against his brother judge as to the doctrine).

Look at the case of McCarty & one report said the widow was quashed - and report &c. all various. L^d Raymond says it was on false public tokens. Can such a case as that justify this c! in borrowing from the adjudications of England upon so important a doctrine as this of Comp. -

Judges in former days seem to have been in love with it. Look at what it is now in England & what it ^{was} in former days. - -

Look at the Journeymen tailors - Cardmakers caps &c. one man might think that putting gulf in ^{from what} was no offence - Morals very diff. at one period ^{in later times} at another. - Fornication & adultery not punishable ^{except} in the Ecclesiastical courts - Plays at one time considered immoral afterwards play actors taken under the special care of this law of Comp. - - - Suppose in a case of political economy where persons speculate upon the subject & persons form an op. - are they to be indicted for a conspiracy. L^d Ellenborough puts the case off to consult Adam Smith upon his speculations the case is decided.

Look at the decisions where in the Sup. Ct. when a rule that a ^{penal} Stat. to be strictly construed. If so in a written Statute more propriety in the imaginary principle of Comp. under the Com. law, buried in oblivion for ages. - an ambiguous principle - It cannot be for the safety of the people of this country that such a principle sh^d prevail.

All the decisions or principles contained from mere
speculative dicta & judicial legislation. -

The penal ~~act~~ code makes the ~~act~~ ^{inhabitant} innocent of the
act if affected w. a innocent. -

Will endeavor to ascertain what that com law
is & is to be applied to this case - If we can ascertain
how that com. law stood at the time of emigration
and those engraftments ^{made} on the com law. -

To ascertain what the com law was before colonization
is easily to be come at = no deficiency of evid. bca it is
displayed in its true character in the statute of Edw? 1.
The counsel for the prosecution have gone as far back
as the Norman Conquest when the com. law may
be said to be in its cradle - But they found nothing
of it. There are ^{law} books before & after the Statute - Statute
They books not produced - why? because they given
nothing on the subject of crim. prosecution. The first
book is that The Book of Assizes - Inu Cowell was produced
but what he says applies only to civil remedy. - a paper
from the crim. head was read wh. is perfectly innocent
does not go beyond what no one denies - Then comes
The Book of Assizes during the time of Edw? 3. & it is supposed
the case then cited bear upon the case before the court.
The 22^d Edw? page 102 pl. 77 to indict a man § 131 pl. 61
to plead a false plea - § 6. 134 pl. 12 Comp. to indict of
a felony - 135 pl. 34 Confid. to maintain querebus of plea

9.

whether true or false - and especially the villainous Judge was pronounced - must have been a grievous case of Comp. to justify the villainous Judge - an^d case of Eliget. w^h wa. to move a false plea. 26 116 pl 12 sent. case similar to the other - an^d case of Comp. & confederacy - This cited to show that they were different - The same doctrine of Comp. applied to both in Crim. Cases - They are synonymous with reference to Crim. Proceedings - you to show that more than unite in alliance - in combination of public justice - 26 177 pl alliance conf. an^d case of Comp. & confederacy - 26 307 pl an^d villainous Judge - 113 pl 14 Confed. to maintain in quarrel etc. - The 5 & 6th art. are comp. or confederacy - 19th art. comp. among merchants.

What are the different Statutes w^h have regulated this subject in - Stat. Staple ^{3 chap. 27 Edw 3.} to explain one of the cases in the Book of a prize the instruction to the Judge the 19th art. show that article founded on that statute, w^h says w^old be may be purchased without cover or collusion - penalty of those who practice cover & alliance, &c. It is clear then the 19 art. was under the stat. and not under the pretended com. law doctrine -

Having then the com. law as set out, if you please in the Book of a prize - let us look at the stat. of Edw³ 1. may admit there may have been a com. law of comp. & confed. in Crim. Cases before the stat. of Edw³ 1. Yet there is no w^old that there was any before then. The com. law may have taken its origin from stat. long since sunk into oblivion. Suppose there was any com. law different from the stat. of Edw³ 1. It was not more binding than the stat. law. Being it therefore com. law or stat. law yet no conclusion can be drawn hostile to

to the diff. in error. The Stat. of Edw¹ was either an introduction of a new law or it ascertained what it was before giving to it certainty. In either point of view the Stat. gives the rule - said the Stat. is void of what the com. law was. This statute purports to give a final definition of comp. - There a Stat. acting upon a certain portion of the com. law - but such was not the Stat. of Edw¹. - It defines what shall be conspirator & adjoints that it shall be final & conclusive - Suppose such a statute made here - what w^d this Ct. say - clearly that it was a complete & final definition on the subject - w^d any man be fit to believe but it covered the whole subject matter. If so here why not so by the Stat. of Edw¹ - Wherefore sh^d the Stat. select particular branches of the doctrine of comp. when it gives nothing more than a definition of it. No reason here for touching the subject partially - Had the com. law been too mild ^{in particular cases} & greater punishment enacted then might be some reason - But it leaves many of its definitions to be punished as before - Look at various other Stat. laying the foundⁿ of the com. law -

It is clear there is no com. law before the stat. of Edw. 1. - If not it is the only evid. of what the doctrine of comp. is.

Look at the stat. See what it enacts - 33 Edw. 1. Ch. 2. (in 1304) - The title is "Who be conspirators". ~~The stat.~~ It professes by the title to embrace the whole doctrine of comp. The enactment is "conspirators be they &c. the object of the confid. is defined. - In first levelled at false prosecutions - then maintinance. - This & this includes perjury - false ind. consid. a most flagrant offence - oppression too by judicial means - converting a protecting power into a del. voying instrument - where falsely ind. c. not support civil case unthp acquitted or ind. ignoramus - There must have been a prosecution. - willing to admit there may have been some such com. law before this ~~stat.~~ stat. - Infants to appeal falsely men of felony. of the same class with the other - Showing the Legis. meant to prosecute for all their great & enormous offences. - The object of the stat. to introduce certainty. Edw. 1 a great man his equal not to be met with He had to struggle with potent Barons. Much of the subject of this stat. is not likely to have been the com. law.

No person will contend that the case before the court is within the definition of the statute w. touched only case fit for it to operate upon?

Look then at the cases in The Book of a prize & they will all appear to be within the statute.

None of the cases, but what ^{are not only within the spirit but are} within the letter of the statute
 Let the cases be examined & they all so appear clearly ^{to have}
 been violations of the statute. These are all the cases in
 the reign of Edw. 3 - nor have any since that reign
 been shown ^{down to colonization} - But said this stat. to construed by Equity -
 not so, it must be taken as it stands ^{according to its literal import.}. Not as it has
 been enlarged by pretended judicial decisions
 in the Star Chamber & others - none of which have
 any thing to do with this state - It was not for English
 Judicature to adjudge for our ancestors - They c^d adjudge
 for themselves - No appeal from our courts to the
 Lords in parliament - There was in civil cases to the
 King in Council - but none in crim. cases - *
 Take it with an equitable construction, & yet it cannot
 take in the ~~case~~ now before the court. In crim. cases
 must have a definitive rule with the aid of plastic
 power - might as well in civil cases, but not in crim.
 where a man contract he refers to the com. law as to its
 infringement - Injur. one to be enforced by the com. law -
 and building up the doctrine of Injur. It has occasionally
 looked into the civil law: c^d not do so to illustrate any
 part of the crim. code - If it had been it w^d not have been
 borne with by the nation - The parliam^t. might as a guide
 in legislating, but not for the c^t. - The crim. & civil code
 very different with regard to the manner of illustrating them.
 The crim. code must be capable of being comprehended
 by the most illiterate of the subjects.

The penal code has nothing to do with that of any foreign part. It is wholly a domestic code. Look at the doctrine of larceny in England ^{it} was that he who stole the property of another should be punished. This the doctrine of the com. law. But the com. law punish for robbery of Bank notes. It is not without a statutory provision. It was ~~not~~ robbery at com. law. Yet said com. law ~~it~~ punish every offence. Was not the Bank note property? As it was valuable property. Yet not punish. When robbery of a shilling was subject the robber to hanging. Why is this? because the law has so written it, there was no law as stealing Bank notes. What then becomes of the ~~plastic~~ power? - away with it. No one to be punished ~~with~~ it is under some law well known & well understood.

What principle is it that this expansion of power is to be given to the com. law ^{which is} not applicable to a statute, so far from having the ~~same~~ power of the stat. the com. law may be restrained & restricted where it contains barbarous principles - Shall this law claim for itself what is not given to our own statutes.

Are there no other parts of the com. law liable to this expansion of power. Look at the law of cheat as it stood at com. law it is accurately ~~defined~~ ^{defined} in East ^{frauds of a public nature} they are then for - 1 Cheats affecting the public, &c
2 Fraud committed by forgery, where public affected, &c

The com. law dealt with none of these cases of cheats ^{and} as of cheats only. Hence the stat. of 1788 which was an affirmⁿ of the com. law to a certain extent. But it created new offences not punishable at com. law

The Stat. of Geo. 2 introduced a new law & met all sorts of Cheats - many of w^{ch} had and before been indictable either under Stat. or Com. law. Where was the boasted power of the Com. law down to the Stat. of Geo. 2. whereby Cheats could not be punished by it. Why not used the plastic power thro' all cases of Cheats within the Com. law without the aid of legislative enactments. - Is not false representations whereby a man is cheated as liable to be punished as this doctrine of Comp. contended for! If so why was the Stat. of Geo. 2. reap^d upon the subject. Why did not expand the doctrine in the one case as they did in the other - Why expand it in the case of Comp. in no other case - affirming the doctrine of "The sinking a vessel at sea to make the underwriters answerable - This no offence at Com. law reap^d for statutory provision. - The act was as wicked & atrocious as this act of Conspiracy contended.

The Com. law in its darkest ages stuck to their technical terms - When murder perpetrated in one eye & death in another. - This required the interposition of Parliament. - There are numberless instances of the defect of the Com. law to punish

for the most high & enormous power, where the
plastic power ^{which is said to be} omnipotent never prevailed.

Finding in the Stat. or as the Com. law if you please
a rule that if you conspire to do certain specified things
it is punishable - will that be notice to conspire to do
any other matter not embraced is to be equally
punished - Does it put a person upon his guard?
The community as deeply affected with the pretended
doctrine, as the Dept. in this case. - If this comp.
prohibited - what agree? consultation is it that may
not be punished as a conspiracy whether the
intention be laudable or not. Where is there the
necessity of the plastic power when statutory enactm^t
might supply any thing in doubt. - But this expansion
of power were common with the English C^t in remote
times - ~~It~~ It might have been justified there from
the absence of parliam. legislation. - Not necessari^{ly} in more
modern times. Not necessari^{ly} for this C^t - if no power
the legislation may redup^l & supply all deficiencies.

As to what the Com. law is 1 Bk Com It

consists either of doctrines derived from acts of parli. or of
usage so far as consists of rules & doctrines from forgotten
statutes. It is to be applied as those Stat. w^h? or if these
produced. Where usage stops then the Com. law stops.
(Not to manufacture usage out of usage) - The same rule of
interpretation in crim. cases of Com. law as w^h? or of a Stat.

so far as the crim. code concerned, ~~cannot~~ take liberties
with the Com. law. - Licenses manifestly dictated by
the system itself may be tolerated at least in ancient
times more than now. -

Suppose all the decisions upon the Com. law
was obliterated from ~~the~~ ^{this Court} memory of the judges
w^d they think themselves justified ⁱⁿ building up the
system contended for.

Look at the case of Cheats. This expansive
power did not always exist - so also as to fraud
of the most atrocious nature - yet established doctrine
with the aid of statute fraud is in personae liable
by law. In case of the Cashier of the Bank of
England who appropriated India bonds operating
upon infants - Breach not or made to avail
of felony &c. not or punished without stat.
provisions - so in Breaches of trust in all its
various branches - This must be felony or nothing

This case now before the Court extract from it
the Comp. no one will contend it is an indictable
offence - yet it will fraud & a breach of trust
still. As to the Comp. it is nothing of itself. why is it

guilty because of the act to be accomplished which was without
 punished criminally. It is in the end, ^{accomplished that} the prejudice
 to the party is founded. The penal code leaves the act
 as innocent as an innocent act in the crim. code - yet
 it is as guilty in the moral code as any other offense.
 The cheating & robbing constitutes the guilt - and a Comp.
 to do so does not make it a greater offence.

The crim. code a system of expansion in nothing
 but Comp. - Look at Homicide what has been done with
 the law on that subject. To make it more & more a
 law of mercy - no modern judge has undertaken to
 assuage the system no matter how the cap itself might
 justify it. - Even if Homicide had been expanded
 in Comp. & Homicide to be placed together. It was not
 the English that adjudicated for us in Homicide, we went
 on to adjudicate for ourselves on the subject.

The offence created by the stat. ^{of Comp} rested on a
 peculiar policy. Its origin was the writ of Comp. 2 Inst.
Co. Litt. 561 ⁵⁷⁰ ~~History~~ Compurators. - This ordinance was but in
 app. of the com. law. The civil remedy & crim. prosecution
 on the same footing. The civil remedy was the origin.
 The crim. pro. was where there had been no Ind. but
 civil remedy only where the party had been put in
 jeopardy. At com. law the civil remedy was
 limited - If so can't be imagined it sh. be more unbounded
 in crim. prosecutions. If no prejudice to persons not ~~prop.~~

the state w^d. be more injured. Suppe. it was more
 extensive in crim. than in civil, yet it had
 its bounds. The stat. after the civil remedy finding
 the crim. ^{law in} caps. aflout, defined it. Men being but
 one unit in Reg. in crim. caps. - The stat. of Edu^d. 1.
 was then to give certainty to the whole penal
 code having reference to conspirators - will not
 be said it contained any new offences - If not
 where was the necessity of its enactment, before
 caps. are enumerated w^d. is admitted to be within
 the com. law. - Immaterial whether the stat. be
 introductory &c. yet it purports to be a final definition
 of what shall be conspirators. Why these words if they
 are to have no effect. Not intelligible unless so understood
 if it don not comprehend the whole - what other
 law is there - It has not been shown that there was
 any antecedent to the statute. The Book of assise
 contain no such law before the statute.

Chaynard 81. 82 has been cited. (in
 Hum. 2). Speaks of nothing but Champerty, &c.
 all within the statutes of articul. &c. and de comp. &c.
 all moving false pleas. -

If there was such com. law ~~to~~ it w^d.
 appear in some of the books

If there was no com. law before immigration, there can be none now.

Stanf. P.C. 174 has been quoted:

It does nothing more than restate the stat. showing that all the law was reduced to system by the two statutes. The last stat. is imperfect, uniform with the stat. of Edw. 1.

It is not the comp. as such that is punishable but it is that comp. wh. goes to effect some crime known to the law

Rastals, ^{lit. Coven} a case under the stat. staple

& in conformity with the doctrine we contend for

Fitz N. B. speaks of no comp. or confid. as ind. wh. not covered by the stat. speaks almost altogether of the civil remedy. So far as speaks of crime. it is in uniform with the stat.

Cornell ^{Int.} 215 - treating of civil remedies.

The expressions are vague but wholly applicable to civil remedies - When treating on the crime. remedy nothing said of Conspiracy.

Stat 8. Hen 8. ^{ch 10.} gives ~~action~~ ^{action} remedy by

action on the case for false indict.

Latch 202 Ind. for cozenage - don't for Comp.

^{guilty because he pretended to be a public power wh. he had not. & fraudul.}
^{the serv. of an official personation.}
^{two cases in} Moore 502. Repeat case of Scroggs & Druid

in Muttan Cham.

That case is in perfect conformity with the principle
under the Stat. of 1820. It was an abuse of public justice -
It was a false plea & the object fraudulent. It was
within the letter of the Stat.

The other case in Moore is a comp. to indict -
What other case is there than, but the Poulterson
case - wh. was a civil case & the single question was
whether the party had been indicted by an acquittal
The c. distinguishes between civil & crim. cases with
a view to that single question. So also the case
of merchants to lessen the price of wool. Nothing
in any of ^{the case} ~~them~~ wh. not within the Stat. If there
had been such a principle est. or found in the
Poulterson case.

2 Roller Abr. 77 (letter G) pl. 2. nothing
more than the case of the Elegit - moving a false
plea with 26. (letter E) pl. 1. says vide 33 Edw 1.
H. - "If a man make a false aff. or an o. in H. B.
altho' no action for it under the Stat. still he may
be indicted for it at Com. law." What has this
to do with Comp. It is perjury. - It falls too within
the Stat. of 1820. 26 pl. 5. If a man swear or promise
and to swear before a man in Chanc. certain articles
of the peace. It is the act of a single Ind. punishable as perjury

§ 6. 78 (letter G). If two men are gamblers & false dice
 to deceive & comp. to cheat. may be ind. for it - This is
 not illustration of the law of Comp. if it is then the cheating
 by one is no offence - Here there was two - nothing
 said about Comp. not under the Head of Comp.
 but under the Head of who may be ind. - But
 to cheat by false dice is indictable whether by one
 or more. 2 East's P.C. tit. Cheats ^{at Com. law} § 820 to cheat with
 false dice was an offence at com. law. Analogous to
 cheating by public tokens. - He gives the reason that it
 is upon the same principle as cheating by public
 false tokens are. - It has reference to the means &
 suppo. to be levied ag. the public. - ^{the case of false dice} ~~It~~ has no neap.
 connection with the law of Comp. - Why sh^d Comp. have
 anything to do with cheating by false dice. Infam law
 applicable to one or to many. - It is in the power of one to do
 as much mischief or many. - often it is where one may
 do more ^{injury} than when counselled by many. - a single
 defamer soon gets confederates without plot. - It spreads
 like wildfire & after a time it is impossible to check it.
 Can you punish him ^{criminally} no matter it is scandal of the
 blackest kind - No - The party is left to his civil remedy.
 Is there no more injury here than if the scandal had
 been agreed upon by many & by them propagated?
 If the law ought to interpose in the one case why sh^d
 it not in the other. - But let two only combine then
 they may be punished altho the scheme may have been abortive

and no matter for what purpose whether innocent or not & whether carried into effect or not, whether they relent or not. - They are to be punished as conspirators.

To have a comp. to this doctrine of comp. is idle - If the act is crim. it may be punished with^{out} comp. If it is not crim. then a comp. cannot aid it.

In most cases compelled to grope in the dark to ascertain what is the Com. law. - But here not nearly, ^{because} the Stat. has defined it & the necessity does not prevail. - It is to be looked at as set out in the Stat. and what it is said to be by ~~some~~ decisions since colonization - If it were now for the first time to be acted on by the present English judiciary - w^d. they declare it to be what their predecessors have declared it to be. -

But the comp. for the prosecution goes no farther back than decisions since colonization when there is a semblance of a case which sanctions their pretended doctrine. Look at the arguments of counsel as noticed in East v. B.L. Look at ^{what} D. Ellenborough ^{says} in 13 East's Rep. in which a counsel is pressed as to the extent to w^{ch}. the doctrine had been carried.

If the com. law be as we say it is - Let us see what sort of com. law the people of this state is to be governed by.

Our ancestors found this country a desert, but full of the Indian race & they expelled by fair means or foul means - What law did our ancestors bring with them? Upon English principles they brought no law with them as Emigrants and it was a matter of choice what part of the com. or stat. law civil & crim. they sh^d use - it is not compelled to use any - This was not an uninhabited country & under such circumstances the Emigrants left the com. law behind them. Jacobus L. D. tit. Plantations &

1st Book com. where all the law is laid down on the subject - But it has been said that we bro^gh

with us the whole of the com. law such as applied. This not so - The Charter of 1191? Do not say

so - The 10th Sect. has been relied on - It relates to inheritance of the Prop^{ty} rights & to incorp^{or}ation

the 7th Sect. makes provision for self gov^t to enact all laws whatsoever - a code of their own choice

If the law of England was binding on them why give this power - There was a proviso. law to be in uniform with the laws of England. The 8th Sect. gives power with^out the

legislation to make laws, not affecting life &c. The doctrine then that we bro^gh the com. law with us no

where appear in the Charter.

But it has been that the earliest case in the province
 was Comp. - Cleyborne Smith - They ^{were} attainted & convicted
 of Murder & piracy - No case of Comp. from the
 time of Colonization down to the Revolution -
 Where there was legislation they lit in the Com. law
 After. law of England where no law of the
 Province. The law of Comp. they did not chuse
 to take & never acted under it. - Supp. our ancestors
 did bring the Com. law they us'd no more than
 that wh. was applic'd. & they were then as much
 bound by the stat. law as the Com. law. When
 the books speak of the law travelling with
 emigration it speaks of the law of the mother
 country generally and not restricting it to the
 Com. law - Who to judge what law it
 was wh. was put in their situation - The
^{Colonists}
~~emigrants~~ judge. - Were c'd. or no other judges
 and they did exert their judg^t. on a great
 variety of subjects. They were not bound to
 repeal, but they had only to say what they
 adopted - and by the non use of that branch
 of the Com. law of Comp. they evidenced their
 intention not to adopt it. - It was not then
 the law of the province at the time of the Revolution

Next comes the Declaration of Rights. - Sect. 3

"The inhab. of many ^{are} entitled to the Com. law of England &c. also said in this Decd. that the legislature, judicial &c. to be separate & distinct. -

The inhab. of many ~~are~~ by the Decd. of rights were entitled to the com. law. - It c^d not be otherwise than to make this Decd. void ^{the com. law} if it had been acted under it in civil & crim. cases by wh. they had been governed. - It never was meant or intended that the whole of the com. law, was extended with all its absurdities & in applic^d to our situation. All laws to receive rational interpretations & shall it be said that the Decd. of rights to be construed with rigor so as to make it busy in producing the most outrageous mischief. - The Decd. of Rights is a beneficial act intended to give free to the people not to bring upon them the whole brood of absurd doctrines - It was decd. to the people of the rights wh. they had to enjoy. - The province in its letter did not restrict it to modifications by the legislature. It was taken for granted that before com. sense was brought in its construction - that the Com. law wh. had been ~~used~~ received & acted on in the province) sh^d be that by wh. the people was to be governed. - It professes to do no more than to say the people were entitled to the Com. law just as they had adopted as applicable

Can it be supposed that the enlightened convention intended that the inhab. of many sh. be punished as had been used crim. for offences which had been unknown by them to be such - Also to the trial by jury - This had been altered from what it had been in England. - also to the benefits of such of the English stat. law as were another ~~distinct~~ branches. - W^d it be violation of grammatical construction to apply the latter part applicably to the com. law as well as to the stat. law - It was an incapacity (but they both stood alike) to limit both to their applicability to our local & the circumstances in com. law it applies to all the antecedent This construction has been given to it by all men of intelligence - Unless it is so that construction will make the com. law a curse instead of a blessing. Taking it as ~~temporary~~ with our construction then it is a deed of blessing & right indeed - and as the doctrine of com. did not exist at colonization then it ~~did~~ does not extend to this state. That it did not exist is ev. by non use, yet cases now must have arisen to apply ^{it} if it was adopted. - Whether com. or stat. law extended is then clearly shown -

It might be said the Decd. of Rights having declared the people entitled to the com. law - no future legis. is to say no part of it th? not by the law of the land. - The meaning was to protect the people ag. ^{massachusetts} judicial, not legislative provisions.

Construct the Decd. of Rights as it may be, still it was the com. law as it was at the time of colonization not what it might be said to be by the innovations of Judges - at an attempt to make the people amenable to trials at Westminster Hall, the people w? not submit.

What are the cases subsequent to the Revolution they are no auth. yet they may be looked at to assist in illustrating what ^{idea} the com. law - But we want no aid to ascertain what the original com. law was with respect to conspiracies.

Some of the cases are not objected to ^{They bear nothing in them} for instance the Tubwomans case. This was upon the ground of its affecting the ^{public} revenue - ^{a similar} If ~~the~~ ^{case} was for the first time to be adjudicated now w? this court put the party to the pilory. ~~Supposed to be a precedent~~. They w? not. Look at the times at wh. this decision took place and yet many good Judges were pronounced where the crown was not concerned. Look at the Quo Warranto cases - at the fate of Sidney. - This case led the way of innovations on the com. law. In this case all the subsequent auth. refer. Is it worthy to be referred to as legal decision.

There is a class of cases to do a prejudice to an individual and the adjudications in some of those cases depart from the old com. law. Many of the cases are reported by diff. reporters & hard to ascertain what was the true case

In the whole of the Bastardy cases where there was comp. in the charge of ~~being~~ the father of a bastard child wh. is punishable by the Stat. of Eliz. The fornication wh. ^{takes place at} ~~precedes~~ the getting the child is punishable. Here a crim. charge is made or a comp. to make it wh. under the stat. is enough

all the cases are comp. to prefer a Crim. charge with a view to extort m^o. - They are all within the Statute. Act^o of Precedents in Tremains. P.C

many of them are very good - but no adjudications shown of any of them. ^{giving them Judicial sanction.} on a kidnapping case ^{in pag 217} when the boy kept in confinement. This was false imprisonment ^{was it that in}

wh. was an offence. ^{In page 114 not Ind. for comp. page 213. & in 216. 217} ^{not bearing on the case before the Ct.} ^{already commented on} 6 Mod. Cheating in wines, also cited in 2

L^d Raym. 6 East Rep. ^{141 P. Ellenborough} mentions the case also the

case in Latch. Shows what the diff. reports ^{Ellenb.} confid. the case in Mod. was - Yet this an auth^o of that com. law wh. is to govern the people of this country.

6 Mod. 99 (2 Ann). This is no case of comp. - - - one man indicted for inducing an apprentice - Why c^d. not this a comp. as well as a vast variety of others. Then some loose conversation upon the subject ^{of comp.} among the judges.

Holt's Rep a woman pretending to be with child &c. has nothing to do with the doctrine now before the Ct. 1 Stra. 144 - The cardmaker case. It is a

A. P. decision. not much autho. - but be it what it may it does not apply to the case before the Ct. - The conformity of the acts of the family made it comp. - Cards made a traffic of revenue derived from it. On the princip. to injure the public trade & it might be that on wh. it took place. There is no reason assigned for the judg. what the reason was non constat If the reason was that injured a private individual, then it was a departure from the com. law. -

Lev. 387 was cited in the Ct. below but not cited here - It is no case of comp. -

~~Yale Bauhinia's~~ ^{The const.} definitions ~~to correct,~~
8 mod. 11. was to the prejudice of the public.

It is so in the Ind. at bar; it is here alleged to be to the prejudice of ^{private} individuals. - Whether such combinations as the Journey men tailors are of public prejudice, is a speculative doctrine. It is not in this case that this Ct. will most to ascertain what is the com. law.

~~It 321 Infringed the law~~

1 Leach C. L. 36 Comp. to marry under assumed names. This case will be hard to be reconciled to the old com. law doctrine - a license to celebrate a marriage can be obt. ^{but} by the party only - The proctor was imposed upon - a false license is then procured in fraud of the law the marriage was the preparation of a means for obtaining a false judg. - The fraudulent marriage was on the death of the man perfonated to obtain dower - Not the actual moving false pleas - But to be come at circuitous - Some apology for departing from the com. law if it was not strictly within it - a title to real estate might arise from the false marriage

It is no case to influence this Ct. in the case before

King v Bishop (Burr.) For taking hair out of a bag. He was advised to make it up or his credit w^d be blasted. It is evident it was a case of felony, as a trespass it would not be indicted. This case with some show of property ^{might} come within the ^{& com. law,} stat. for the menace was to prosecute for an offence, - a false charge, necessarily a crim. charge - as much an offence in one individual to extort m^o. as for many.

The offence of riot, rout, &c. is the unlawful assemblage to the terror of the King's subjects & agt. the peace &c. -

1 Part P. C. 460, Lord Grey's case (The Ind. in Tremains)

The offence was a most atrocious offence. The guilt turned out on the doctrine of conspiracy, whether it was an offence at com. law is not material. The actors were Lord Grey few^t & acted by his order ~~he~~ ^{was} not be termed conspirator. The act itself if ind. ^{of itself} per se & consp. d. not make it more so - might heighten the color of the crime. It was an indict. under the age of 18 ^{and the forcible abduction} ind. with or without conspiracy.

This case perfectly consistent with the doctrine contended for on the part of the Dept. in error. The case before was since colonization in the reign of char 2 -

Tremains P. 92.93 Ind. for cheating at cards &c.

The cheating was by more than one, but no consp. charged

The idea on the case in Rolle applicable here -

All the precedents are susceptible of clear explanation & none of them have any bearing on the case before the Ct.

Other precedents cited from The Crown Circuit C. - Chitney
 H. - They are all positive cheats - all falling within the
 explanation ^{already} given. -

* Leach 232 ^{Heavy case} & cited 2 East C. L. 858. Comp.

to cheat by false pretences under the Stat. of Geo. -
 It was an ^{indistinct} offence independent of the doctrine of Comp.
 The fraud was effected. Here was m^o. obtained by a false
 pretence made penal by the Stat. But said it was not
 laid by the Stat. It was for a comp. to commit the
 offence. If the act itself with the comp. it sh^d be by the
 Stat. but connecting it with Comp. need not be laid
 by the Stat. See Chitney C. L. 2 Ind. on for 518 a bill of
 exchange under a false pretence & the other Ind. on the comp.
 to affect the cheat. The first by the Stat. & the other at Com. law

Ventres No comp. is charged. The offence
 was an attempt to commit a fraud thro' the instrumentality
 of a C. of Justice

1 Siderfin maintenance coupled
 with fraud.

2 East C. L. 882-883 - An interruption
 to public justice - some of the judges consid. it forgery.

6 TR. 636 King v. Phillips ^{allowing to do} ab^t the false
 cut. ab^t roads - an attempt to obstruct ^{the} justice the comp.
 of Justice. Plow. & Co. Litt. ab^t coven.

The King v Eeles (The Tailors case) Comp. to impoverish a tailor & prevent him from working at his trade).
 Ind. for comp. to state the nature & object need not state the means & prove the odious doctrine of Comp. in its enlarged sense by showing the means need not be put in the Ind. - The comp. must be stated so as connect the crim. view with the combination. Where the object of the combination is to violate the law the guilt goes to the combination - Here is a show of reason when the act consummated it may relate to the unlawful combination. But the comp. in its abstract is innocent unless consummated by a crim. act. - But in this case Eeles bro't to answer for a comp. & this not apprized of the means used - but ^{ind. of} the means may be used ag him without having stated them in the Ind.

This case mentioned in 13 East by Ad. Ellens.
 Is it to comp. in restraint of trade - not of its tendency to prejudice an individual - How is it affect the public trade of the country? It puts the C. to deal too much in political economy - when it strikes directly at the public police, than might ^{or injurious to the public} some pretext - But not circulous - No wrong but it does in some degree touch the interest of society. Law not vindictive for the sake of power - If this to be interpolated into

the crim. code, what case is there but might be bro^d within it. These conclusions are pregnant with danger to the whole community. -

Clifford case. - The first question was Brandon had a right to arrest Clifford. - D. Mansfield refers in obiter to Macklin's case. - Wh. his Lordship a little expands - What was Macklin's case? He was a play actor & a party testified him to be guilty of a riot. - Two counts in the Ind. one for a riot & an^o. for a comp^r. to commit a riot. The Ct lays down the doctrine that a combination to hiss an actor is a comp^r. Take it in connection with the other cases. - Need not ^{prove the combining} more than one hiss, it is no comp^r. but if more than one hiss then it is comp^r. - any one person may hiss with impunity. If two or more hiss, then it said to be agreed on & comp^r alleged. - The com. law does not justify any such decision as took place in Macklin's case. The principle in the stat. as applied to specified defined cases. Is it bro^d you find in the stat. that a comp^r. is an offence in certain cases, the Ct. can apply it to hissing at the theatre & any other case they please. - Look to mischief to which such a principle will would lead. It were better to leave stage actors to be dealt with by the public. It is unjust to vindictive justice. It w^d? never prevent hissing. It is as difficult to prove this case to be law as it is to prove what the com. law contained for it. (3 Burr. 1432)

The case of Sir Fras. Delavall, not bound to dispute the law of this case. It was a case of female seduction

Seduction & incontinence is from times indictable
 said that a man who in open day frequent about
 of ill fame is indictable - In this case it was not the
 comp. which acted on public morals, but it was the
 act itself - She had been seduced & the comp. was
 to obtain a false assignment of her indentures hip to
 become the apprentice to a pretended musician - In truth
 for the purpose of continuing in the prostitution -
 The C. may or may not bring the case within the
 doctrine of comp. - But it has no analogy to the
 case ^{now} before the court - In the case cited the fornicatⁿ
 seduction had preceded the comp. - & the comp.
 did not brighten the offence -

The case before the court is a breach of trust
 a civil wrong, but not a crim. offence no matter
 for any alleged of comp. The act is innocent with a
 view to the penal code as any other det. -

What effect had the prosecution in Delavally
 case. It was hushed up. Its effect had more pernicious
 effect than public good -

King v Wheatley. Ind. for a cheat - an
 atrocious cheat accomplished by misrepresentation.
 The C. held it not to be an indictable cheat. In the
 course of the case the subject of comp. was noticed -
 If Manifold a cheat may be made indictable thro'
 the means of public tokens comp. be; ordinary prudence of

Now as to the soundness of L. Mansfield's doctrine - false public tokens when used may be prosecuted as a cheat ^{because} ~~when~~ ordinary prudence can and should guard against. This is not the true reason - The true reason is assigned in 2 East C.L. But what ordinary prudence cannot guard against is hard to tell. It requires calculation - no fixed rule from which to fix - False public tokens might be guarded against as easily as any other false tokens. Earl shows it to be the having the false tokens manifest an intention to cheat. The ^{pretences} public stamp is made the means of deception. False representations, not a cheat accomplished thereby, not indictable. ordinary ^{can &} prudence ^{and so of many others.} cannot guard against them; and if not why not indictable - Shows it is true: ordinary can of prudence was not the reason assigned by L. Mansfield. See also Chittys C.L.

Said the analogy complete between cheat effected by and comp. true: ordinary can of prudence cannot guard against it. - No doubt if an indictable cheat is effected by comp. it may be indictable as comp. ^{in the separate or together} cheat. It is the same offence that the cheat has been accomplished - It is more aggravated when accompanied by comp. - The comp. when the cheat not effected would not be such an enormous offence as if the cheat had been effected - But a cheat not punishable as a crim. offence, a comp. to commit it will not make it crim. - ~~a comp. to stand~~

after all is the law of comp. applic^d to the case before the Ct. - Breach of trust not indictable and being so the law of comp. is not applicable.

But to apply the doctrine to small subjects to here the matter is not confumated is too dangerous for this Ct. to sanction.

Chauncy Helwyn 68. (1814) Ind. to compare to
~~laid to the injury to the whole public - independent of~~
 raise the Gov^t funds - Expressions used by the Ct. has been
 relied on - The fraud was levelled at the public &
 indictable without consp. upon the principles
 as contended for - The means are used universal
 The Ct. said it ~~was~~ ^{need} not be charged to the injury of any
 particular individual - one judge says a class of
 the things subjects - This will be said ^{to be} similar to the
Bank of the U. S. a political personage forming a
^{a single individual} unit in contemplation of law. It was consid. in England
 that a fraud of the Bank of England was a fraud
 as ^{public} the stockholders - The Bank was not stand
 different from individuals - No case shown where
 officers in the Bank of England crim. prosecuted
 for fraud on it - Not consid. that a fraud
 levelled at the Bank, was a fraud of the public.
 The case of the resign^{ers} of the officers (2^d Clive) was
 an offence of the public - India being a part of the
 British empire - ^{expression of the} The case in Chauncy Helwyn then
 cannot apply to the Bank of the U. S. Nor can that
 case of a fraud of the public be hold to bear on the case of single
 individual - If the Bank the public, then why not other chartered societies

Tho' called the Bank of the U. S. it is not the U. S. Bank.

There were some preliminary observations which were made in the opening of the case & require some answer - as to wrongs and injuries - There many wh. are committed daily & are a departure from law - tho' not to be punished by the crim. code -

When the doctrine of a libel - It does not ^{look} to the protection of individual character - but ^{to} ~~the~~ ^{the} breach of the public peace - ^{look} ^{to} ^{the} ^{libel}

Criminal Intention ^{to commit a crim. act} is always punished - but to punish it the act must be done in pursuance of the criminal intention. so as to ^{act} with intent to murder -

13 East Rep.

Chitty C. d. ^{credit} destroy the ^{of}

whole of the old cases =

Chase, Ch. J. The court do not wish to hear any thing ^{further} upon the two preliminary questions respecting the unit of error & the manner of its return.

Harper in Reply. Upon the question of Jurisdiction.

It has been urged on the part of the defend^ts

in error (tho' not by one of the very learned counsel) that this court has no jurisdⁿ of the question. by our gentlemen

1. That the Ct of the U. S. have a com. law jurisdiction over all offences

2. That this com law jurisdiction is exclusive of state jurisdiction.

Proth these propositions are untenable & the course of the prog has been settled.

1. How does this comport with the settled decision of the Ct of the U. S. - It first came before the Ct as reported in Dallas: an attempt to bribe a comr of the revenue. and ^{on} a prosecution in the circuit Ct of the U. S. - ^{it was} ~~and~~ ^{by} Judge Chase that the prosecution sh^d not be sustained in the Ct of the U. S. - That the U. S. had no com law for criminal purposes. after this Acadmont Goodwin occurred. The case was not argued & why was it not argued? Pres. it was said it might justify a prediction he. No, this was not the reason why the atty gen. did not argue it. More likely he did not confid. the case sustainable

and refused to argue it then for the same reason that
 he was refused to argue it now, ^{the doctrine} ~~because~~ it is not tenable -
 The Sup. Ct. sanctioned the doctrine laid down by Judge
Chase. - The only Judge dissenting then was Judge Storey.

The case of Coolidge men followed & decided
 upon the case of Hudson & Goodwin. The Judges intimated
 that they wd hear arg^s. - But none has been made.

These cases then settle that the U. S. has no Com.
 law jurisdⁿ in crim. cases. - Even if they have Com.
 law jurisdⁿ in crim. cases what is it that gives them ^{that}
 jurisdⁿ exclusive of the that of the Ct of the State.

The comt. says the states shall not legislate on
 certain subjects. - But if not ~~to~~ expressed to be
 exclusive, then the state Ct are concurrent. -

The arguⁿ of an^o of the gov^s take the case
 up on four grounds. -

The three first propositions are unfounded
 1. That the ^{gov^s & State} gov^s are foreign to each other
 said to be similar to a line drawn from the two gov^s
 to the heart of the citizen - Rights created under the
 U. S. laws can enforced in the Ct of the state - so rights
 under state laws may be enforced in the U. S. Ct.
 a judg. in state may be plead in bar in the Ct of the
 U. S. - The laws of each are enforced in the Ct of
 the other - They exercise branches

They emanate from the same nation and each other enforce each other's laws - Can it be said such govts are foreign - Must elect senators to represent it in the rights of the Union - No similarity to other foreign nations - Suppose they were foreign - What then. ~~can~~ cannot a foreign corp: be redressed for injuries on its property?

2. The com. law takes ^{cos.} notice only of offences ^{as beings} known to the com. law. -

This not an offence ^{as a being} - It is an offence ^{of the laws of the state} - It is an injury done to the individual, but the offence ^{in the person of the bank} is ^{of the state} - The com. law takes notice of corporations after they are created. It enforces their rights & protects their rights. They can ~~bring~~ sue for their rights & debts & recover their property. Wherever they have rights they can be enforced & may be protected from injuries on its property. ^{if U.S. is a political being unknown to the C. Law}

3. The Bank ^{of the U.S.} has no jurisdiction over them has any force -

Will now show that this ^{it} has jurisdiction - Wherever the state possesses ^{orig.} inherent jurisdiction it is not taken from it by an act of congress or by the Comt. of the U.S. Then the state has jurisdiction notwithstanding the matter ^{is} brought forward under an act of congress.

Houston v Moore, 5 Wheaton. settles this principle -

The act of congress gives a divided power respecting the militia.
 certain powers to be exercised by congress & other powers
 by the states. 5 sect. (2 vol. U. S. 285.) 4 Vol. (in 1814) 1 sect.

The first act declares the offence - & the second act regulating
 the courts martial & points out the mode of punishment.
 Thus a ct. firm to have taken in the whole ground. But
 Jurisd. ^{given to the ct. martial} is not declared by the br exclusive to that of the
 state courts martial, wh. did not fall within the Judiciary
 act respecting other courts. - The state of Pennsylv. passed a law
 similar to that of congress & auth. their state ct. martial to
 punish offences & came in aid of the act of congress - on a
 refusal to obey the call the delinquent was tried by the ct.
 martial of the state & convicted & a fine assessed - This action
 was brought and the question whether the state law was constitutional
 and the court held it was not unconstitutional - on a writ
 of habeas corpus to the Sup. Ct. of the U. S. - Washington J. delivered the
 opinion of the ct. which affirmed the decision of the state court.
 The other judges no doubt concurred in the great principle
 that as the act of congress did not declare it to be exclusive
 of state jurisd. the state retained a right to regulate upon the
 subject. The offence was aff. the act of congress, but the ct.
 martial of the state might punish the offence, but the
 act of congress had not said that the Jurisd. of the courts
 martial of the U. S. was to be exclusive of that of the
 state courts martial. This case goes much further than
 the case before this ct. - The act of congress does not
 declare this offence ^{to be an} ~~to be an~~ ^{if they had then it would} to be cog. by their courts - ~~no doubt~~
 then the offence not created by congress & the U. S. not having
 com. law Jurisd. then there was no clashing of Jurisd.
 If this ct. of this state had jurisd. it was retained

The opinions of Judges Johnson & Story affirm ^{Sanction} the principle contended for altho they did not agree with the Court in every particular. They consid. the creating the courts martial by the act of congress was exclusive of that the state courts martial. ^{principle contended for is} This corroborated by two acts of congress esp. 4 Vol Lancet.
 of a counterfeiting coin - sect. 4. proviso. shows that the ^{principle} ~~act~~ was exclusive
§ 6. 92 punishing frauds on the Bank of the U. S. - counterfeiting, &c notes - proviso 1st sect. not exclusive of state jurisd. - Princi
 two acts neg. the idea on w^{ch} the decision in Hudson & Moore rests. ^{Houston}
 It is denied that the state cts. had an inherent jurisd. of the offence - It was an offence committed within the terr^o of the state & must be cog. in the state cts. unless it is excluded or taken away - said it is done in two ways viz. it might impede an institution established by the U. S. e. all Cullon vs The State of Maryland has been cited (4 Wheaton 438) wherein Marshall Ch J see the conclusion of the op^o. w^{ch} is relied on to prove that nothing can be done by the States of controlling the operations &c. of the Bank - and said that this prosecution will have the effect to impede &c. the operations of the Bank. - This ^{decision} must be taken like all other decisions ^{to apply} to the subject matter to w^{ch} it refers - as such acts of legislation w^{ch} w^d have the power to impede &c. the Bank by taxation of such like proceeding
 The generality of the phrase of the op^o. of the ^{state connected by the subject matter} cts. goes often beyond the ex^t.
 for in Cohen vs The State of Virginia (6 Wheaton 399) the Supreme Ct. of the U. S. had occasion to revert to some of their own opinions - and this says saw. phrases used going beyond the case &c. to be restricted to the matter before the court

But the op. in McCulloch v. State of Maryland restrict the generally of the previous expressions up - for the C. say the State may tax in a certain way ^{some of} the property of the bank in the course of genl. legislation in common with other property of its citizens. - In laying the tax w. might be laid w. it not in the language of the diff. could be impeding the oper. of the bank for to ascertain who are stockholders belonging to the State it might be necessary to examine the books of the bank &c. -

There is nothing in the case to prevent the inherent jurisd. of the State courts.

But said it is retained & ousted b.c. the offence is created by an act of congress - This is denied, b.c. to create an offence it must be forbid; this has not been done by congress - There is no legislation on the subject - They create the being, but not any offence of it; of ~~the~~ ^{the} ~~bank~~ ^{bank's} officers &c. by any of the officers of the bank - Congress creates a post office, but don not declare it shall be murder to burn it down &c. it is then left to the State Ct. - If it were an offence created by congress yet under ^{Houston} ~~Henderson~~ & Moore it might be tried in the State courts, b.c. the act points out no jurisd. for trying it. ^{for the purpose of genl.} Suppose these diff. had broken open the bank & robbed it of its m. - who doubts they might be punished in the State courts. If so must be on the principle contended for on the part of the prosecution - Robbing the mail &c. liable to punishment ^{under act of congress} yet no doubt the robber might be prosecuted in the State courts. The U.S. have custom houses & in it property belonging to the U.S. will it be said that a robber of it or burning down the houses w. not be punishable in State courts - and various other cases. So our the State jurisd. ~~that of the State~~ it must be expressly stated that that of the U.S. Ct. is exclusive.

again it is said the offence grows out of the relation in w. the diff. stand ~~that~~ the relation grows out of an act of

of conspur. w^d it be an offence if committed by any person not belonging to the Bank - This will not be denied. The offence arise out of the nature of the act, suppo. a military officer refuses to obey an order, this offence arises out of his official situation. - But suppo. the officer commits an assault &c. w^d that be an offence arising out of his official situation - Numerous other instances are mentioned. The true criterion is take away the official character & if any offence remains, it does not take away the official character of the diff. I shall have they committed an offence -

With respect to the inconvenience w^d w^d arise from the ^{Courts having} two jurisdictions in the affairs of the Bank or any other matters, suppo. a civil suit & dispute as to amount of deposits & the diff. claim to have a larger sum than credited with it & said the party w^d have no right to examine the Books of the Bank & have them produced before the C. at the trial - and this in a state court. They are inconveniences growing out of the administration of justice & are unavoidable.

It must be evident therefore to this Court that the original inherent jurisdiction has not been taken away & that it remains in full force. -

As to the question of conspiracy. Many topics animad-
 verted on by the opposite counsel are ^{unnecessary} ~~not~~ to be noticed as having
 nothing to do with the question before this Court.

The only inquiry is how far the law of conspiracy
 is evidenced by the decisions which have taken place
 upon the question. - The cases produced have been laid
 so fully upon the Court it is unnecessary

said that the Stat. of Edw. 1. was declaratory of
 the com. law & the whole com. law as it then stood
 upon the subject of conspiracy.

Is it such a declaration of the com. law?
 It is a decl. of a portion of the ~~offences~~ ^{acts} com. law ^{on the}
 doctrine of conspiracy. - a peculiar class of offences
 committed by great Lords was taken notice of in this
 Stat. - It cannot be imagined that he intended to
 exclude many offences wh. the com. law noticed
 It was a decl. for greater notoriety of certain great offences
 This Stat. creates ^{new} no punishment nor create any ^{new} tribunals
 for their trials - The expression of the Stat. is that they
 who de. 1 Vol. Stat. There is this sentence "This ordainiz
 de. - nothing to do with the statute saying it is final. The
 first is in Latin & the latter in Norman French. - No
 Stat. in Latin at that period. It is a mere note of the
 compiler of the statute for it is expressed in the preteritum
 tense - Canlip's translation has made it a part of the Stat.
 Hawkins has also said it was a final de. He is entitled to great
 respect when writing de. but when he takes from an? This de. can judge

Thiefst. did not profess to be final or concluding all cases of conspirators - This manifest from The Book of Assizes 138, 139, where two punished for a matter whether true or false, noticed in 9 Coke as a decision of that time. But said this within the flat of Edw? 1. That flat. does not punish the offence here mentioned. It shows that thiefst. did not cover the whole ground of conspiracy. -

But said there must first be known law before under wh. a man is to be punished. To whom is it to be known - The court are to declare whether it be law or not. -

16. 139. The articles of inquest of office &c. as well of the now king or the late king - The 19 art. about wool. and said this provision was founded on the statute staple - Wh. statute was after the inquest of office - The first in Michaelmas term in the autumn and the latter in the winter. Besides these articles used during the reign of Edw? 2. - The statute staple declared no offence &c. and not understood as a penal statute, a proviso not to be exempt from the law - The com. law then existing. It was a privilege granted subject to the existing law.

Here then are two things wh. if done w? be a comp. & they are not enumerated in the flat of Edw? 1. Show that they were under the com and under thiefst.

The decision goes upon the ground that combinations for fraudulent purposes sh^d. be put down. - Cannot draw the line between a combination of two & 200. In the gen^l. tending two ^{or} more are more dangerous than one. If these combinations were left unpunished the public ^{peace} interest w^d. be endangered. The tendency of the act is to be restrained. Where a trifling theft is punished it is to prevent the danger of universal theft. Not bec^o of the particular injury w^h an individual may receive, but it is for the protection of the public peace, quiet, &c.

How does it become that Ct. of justice are obstructed ~~by~~ by combination not the injury to the C. but the evil tendency of the act of combination. =

But said that the law sh^d. extend in England w^h as to this State it remained as it was at colonization. It may be asked what is the com. law? said to be a mere collection of adjudged cases. This w^d. be leaving the courts to make the law & not to pronounce it. This is not the true idea of the com. law. It is a great system of things as the same to day, yesterday & for ever, and to be administered by the Ct. It to be pronounced by the Ct. as to what it is.

Clay referred to where the com. law did not reach - Robbery of Bank notes - This shows the Ct. did not regulate upon the com. law - But declared when it was applicable to when not. - This is the cheating by false tokens were left to be regulated upon. They were not belonging to that great system of the com. law as evidenced by adjudged cases & law writers on the com. law -

The com. law in Edw.³ 1 the same as Geo. 2. The enlargement of society raised new conditions to w^h the com. law d^d. not apply

To what time are we to go to ascertain when the com. law operated here - at colonization in 1632¹⁶³⁴ - 1637¹⁶³⁷ - ^{from him to him.} when? The colony was enlarged by new emigrants. When people emigrate to a new country they carry with them the laws of the mother country so far as they are applicable to their situation from time to time - subject to legislative control & authority. They might fail to apply the com. law & a case might not arise for its application - still the com. law remained in force. The 10th Act. involves the great principle that they ^{brought} ~~carried~~ the com. law with them.

The Tubwomen case adjudged in 16 Car. 2 [1664]. Can it be imagined that this doctrine was first declared in this case? The trade of the Tubwomen was broken up & the enjoyment by the subjects was prevented. The revenue was given in lieu of other things - The case cannot be applied to improper motions. The persons combined to get rid of a tax and break up the Tubwomen &c. Many years after this case before the right of Char. was tyrannical - Look who were the judges then - Note at the case ^{and of} indictment moved for the King as to the manner of the confed. to enhance the fine, but the C^t refused. Med. C. in Levings 124 and this ^{at this time in Lev.} fixed the doctrine that a man sh^d. not be tried a second time - after acquittal then sh^d. be no new trial in crim. case.

and tyrannical

It is not true that the reigns of the Stuarts were more arbitrary than preceding & succeeding reigns. - altho' it may be said that when the crown was concerned in many cases the judges had an unfavorable leaning in favor of the crown - During the time of Jeffries who was great ~~good~~ judge & except when crown concerned never said he did not decide correctly - so also of the Star Chamber wh^{ch} was ^{may be} supposed in political cases - but apart from that it was a great court - and Bilk says its decisions were taken up by the Ct. of K. B. - Trustar Cham. was the custos morum of the nation - offences ag. good morals. This punishable now was by the K. B. always -

All this furnish evid. that the law pronounced in the time of Car. 2. down to 1820 was understood to be law of Com. Law. at Com. Law.

Combination may be inferred from circumstances by the Jury - This is every day practice - Yet said that the offence requires no proof -

The great principle is this that combinations by indirect improper means to injure ^{third persons} are to be punished by deceitful means -

If the com. law not extended at colonization, then it was by the Bill of Rights declared that the people of Mass^{ts} were entitled to the com. law. - The Bill of Rights part of the const. - The 3^d Sect. - What com. law is meant by the com. law as it was understood & acted upon in England at the time of the Dec. of Rights - If meant to restrict it did? have been done - as it was with respect to the Statutes. a limitation as to legal but not as to the Com. Law

But said the limitation may be applied to the expunging
 respecting the com. law. This cannot be from the very
 expunging used - But it is said such of the English
 Stat. If intended to limit to both stat. & com. law
 then the words would have been different. The
 English Stat. made after Emigration were not bro.
 by the Emigrants, ^{and were not binding here} but the com. law was bro. with them
 & that com. law remained the same, as it was developed
 in England it was ^{adopted} here. Look at the decisions
 in our Ct. before the Dec. & it will be seen that
 cases were tried according to the com. law & com.
 law decisions referred to.

^{in 13 East}
 D'Ellenborough acknowledges the general
 doctrine of Conspiracy - There must be something of
 falsity in the act - in the means used (3 Burr. 1436)

Sir Fras. B. Bellaval said to be founded on
 the violation of public decency. - The case was a
 combination by indirect & deceitful means to
 commit an act injurious to a third person -
 The injury to the father is one of the ingredients in the
 offence. The injury was to get her from her employers
 (King v. Grey, 1 East C.D. 460. This said to
 be founded on a stat. This not so - The Inf. was at com.
 law & not on the stat. It was for the injury done to the
 father, a case of private seduction. Mustal in 489 in East
 disclaim the offence if against the will of the maiden)

It was such a case as the com. law ^{is}? Reach unless
there had been a conspiracy - and it was punished
by means of the conspiracy. -

Wirt (a Hyphen of the U. S. J. is in reply. The arg. to be
limited to one subject only. It has been attempted to found
the alarm ^{on} the doctrine contended for on the part of the
prosecution - ^{What will it be said} that to prosecute for combinations to defraud
a Bank - to Cheat a neighbor ^{that} ^{an} what the people w^d not
submit to? The description given of the prosecution by the
gov^t turned for the defence: ^{It has been distorted & a color given to it & it does} ^{not} ^{represent} ^{it} ^{is} ^{of}
importance to society that the laws sh^d be administered, as
well for the benefit of the poor as ^{well as} the rich - as well
as the one as ^{as} the other. all have equal rights - and
respect for the gov^t will cease when the laws are not equally
administered. It is the duty of all to see that the laws be
equally administered and to aid in their execution for
the punishment of guilt as well as for the acquittal of the
innocent. - what is the prosecution? They are charged
with the comp. of doing the act - all of w^{ch} by the
demurrer has been admitted - notwithstanding w^{ch}
they now pretend that the prosecution ought not to
be prevail ag. them. And it has been so distorted as
to make them

Is it crim. to cheat by comp. is it crim. to comp. to cheat... The defence attempted is to do away the first cases w^h preceded the case in Sedgwick & others & to make them to come within the Stat. of Row? 1. But with regard to the cases since Sedgwick it endeavored to get rid of them it was resorted to that were since colonization & therefore to be excluded from the view of the court. The attempt then was to throw all the previous cases as coming within the Stat. & those since Sedgwick as having been decided since colonization -

The whole scope of the Com. law is open to this court down to the formation of the state constitution.

will show that the Stat. of Row? do not embrace the whole doctrine of the Com. law on the subject of conspiracy.

said that our ancestors did not bring with them the Com. law of its ancestors. This was not needless if the Stat. of Row? 1 embraced the whole -

The true construction of the Bill of Rights is only to be looked at -

Did our ancestors bring the Com. law with them?
 If a col. settled in a wilderness then they carry the
 com. law - But if they go to a country ^{governed by a civilized nation} & conquer it
 then it is otherwise. Hales Hist. Com. law. Calvins
Case in 7 Coke 1. Grotius & Puffendorf!

Now is then of conquering a country inhabited
 by an un civilized nation - Blk. is not full
 upon the subject. The result of an invasion -
 But in ~~conquered~~ conquered country &c. Here was
 the case of infidel with ^{the} laws - The conclusion
 taken by Blk. does not follow from the premises
 He says the com. law not in force if not then the
 Indian laws were - What were they? They had
 none - What law ~~then~~ did the Emigrants take.
 see Judge Tuckers note to Blk. -

The Emigrants to this Col. bro^t with them
 the same laws w^h they w^old have bro^t if they had
 settled in a wilderness uninhabited by no description
 of people. The Indians here were never subject
 to the laws of the Conqueror. -

If the Emigrants bro^t any law with them, they
 bro^t both the com. & Stat. law so far as it was
 applica. - What portion of the Com^l law did they
 bring - that w^h then existed or as it since exists?
 The Com. law always the same & it was the same at
 Emigration as it is now. It is a system of principles

D. Mansfield discusses it. — as the com. law founded on immemorial usage. It is said such a usage might have taken place in England after Emigration & that there is a com. law there w^{ch} is not here. The com. law has changed form of its modification. But there can be no com. law w^{ch} did not always exist at & since Emigration —

In trial of cases before the Revolution there is w^{ch} not reject the auth^o. of Hawkins, Blackston &c. and look only into auth^o. before colonization.

Supp^o. our ancestors did not bring the com. law with them. We come then to the Decl^o. of Rights — and what ~~did~~ com. law did it declare to be the right of the citizens? The language used adopts the com. law in general terms — It adopts the stat^s. such as were applic^o. The com. law then being adopted, how is it to be ascertained what it was — Blackst. & other books contained the com. law & they must be resorted to for the purpose of ascertaining it. What is laid down by Blackston The Court. does not limit it & how can this be.

limit it. But said that the Com. law was adopted also with limits - ~~As to them to restrict the Com. law & enlarge that of the stat. law.~~ - said the words of him? attack to the com. law as ~~well as~~ the stat. - never saw where a sentence constructed like this is to be governed by ~~on~~ the limit. The com. law in mass & all such stat. &c. There was a marked distinction between the com. & the stat. law. - The com. law fit for all subjects - The stat. limited to particular subjects.

In view of the same adopting of Com. law & stat. the first in mass & the latter restricted.

Min. &c. are called on to legislate if they give the construction asked where no doubt exists - To attack a limitation w^h the constitution has not attached.

It was asked if ^{we} were ^{to be} not emancipated from the com. law. But ^{to be} bound by it with all its imperfections. The expulsion is the people were entitled to the Com. law. Dashed if the people are entitled to be put into the pillory &c. - The meaning is that they are entitled to be protected ag. foul conspiracies &c.

Said this com. law ~~if~~ has laid dormant & forgotten - and now bro^ught to life to ~~benefit~~ the good people & that without notice. They had notice by the constitution, & Hawkins distributed thro' the country w^h pointed out what the com. law was with respect to conspiracy. Non user is no ground for supposing the com. law did not exist. The non existence

is no objection that the law did not exist. There may have been no offence. It is by strange to abolish a law because it had never been applied for it might be that no offence - or the ignorance of the law is not to be for every man has it implanted in his heart that he must not cheat his neighbor &c. It would result in this when a man put on his trial he is asked if he did not know the law, he may answer no & then he is to acquit. Ignorance is not to be regarded.

Next to be inquired whether the charge in the Ind. is a crim. offence & to be punished - It will seem that a few recent cases w^d be suff. with resorting to the fountain from w^{ch} all the latter decisions emanated -

Said must bring the offence with the Act. of Ind. or it is no offence. If then to show that the Act. applies.

Said often to find out from what sources many of our principles are derived similar to discovering the source of the Nile. But no matter whence it originated - yet it is the Nile. So may take the Com. law as we find it

developed by able & enlightened judges - Lord Hale informed us ~~in~~ the unit of Right - He divided the old & modern statutes into two classes - one class was consid. as the com. law & so consid. by the Ct in England. -

The stat. of 33 Edw. 1. did not originate nor did it profess to cover the whole ground of Comp. But that long before then there was a com. law of Conspiracy wh. covered all the ground contended for - This stat. of Edw. defines trifid conf. to Ind. other comp. - Two distinct kinds - In a short time the whole dropt but the com. ~~as~~ comp. to indict from the office took down nothing abt the other comp. the other pursued & has come down to us. This stat. relative to comp. to Ind. ^{with. requiring the act to be concerted} stops at this Comp. - When Lord Coke wrote the definition given by the stat. was gone - He said it was no offence unless the party was ind. & acquitted - 3 Inst. 113. Lord Coke definition goes beyond that mentioned in the stat. applied to the civil & crim. offences. - He reasons on the villainous judgment wh. was never unless there had been an ind. acquittal - Shows that the stat. had been dropt & that the com. law resorted to. - The name of comp. junk into confed. In the Poulters case he may have con.

Was there no comp. before the stat. - Does it profess to enact a new crime - It obviously meant to explain. Whence comes the villainous judgment - Not from the statute. Lord Coke says it was introduced during

The ~~reg.~~ to Henry 1. - 2 Inst. 383. Speaks of the villainous
ridg. 200yrs before the stat. of Edw. 1 - How then can
the stat. of Edw. 1 be said to have introduced the com.
law of Comp. The villainous ~~ridg.~~ substituted by
Hen. 1. in the place of that which existed before
2 Inst. 562. The stat. in affirm. of the com. law

It is a maxim ^{that stat.} in ~~offic.~~ of the com. law does
not include or narrow it. ~~Sumner~~ Hist. of Engl.
speaks of the stat. - The com. law definition
in Hen. 1. is what defined by COKE. This supported
by the Book of Assizes. When comp. charged it was
not ~~just~~ but must allege the overt act. - The
court ~~is~~ not sustain the rid. if under the stat.

These separate offences of Confederacies was
distinct from Comperaries - The first covered
broader ground. - This direction perfectly
well understood in the reign of Edw. 1. In
the Index to the Assize Book he has two distinct
heads - one Confed. - and Comp. and they
are clasped - Comp. required execution - Confed.
did not require - The Body of the Book shows
the offences were distinct. Page 146. at
one time in the B. certain Comp. & also Confed.

Why use both when we w^d answer - Adam said since
 all were acquit but him, he c^d not be a dyed a Comp.
 nor a confederator. It. 166 pl. 49 - so of comp. but not
 so of confed. - queer - does not do away the distinction, but it
 might be a doubt it is removed in page 138 pl. 44. Note
 two Ind. of confederacy. He decided that nothing need
 be executed - But in Comp. the act must have been
 consummated - 1 Siderfin 174 it was urged there was
 no comp. but all agree there was confederacy for w^t
 the party might be indicted & find

Keble 675. Windham. - If comp. there
 must some overt act alleged - But not so in Confederacy.

6 Mod. 186. Holt. This is not for a comp.
 clearly admitting a distinction between Comp. & Confed.

This distinction accords with Hawkins' definition
 who controvert D. Coke's definition who requires, &c.
 all confed. highly crim. at Com. law. shows he speaks
 of comp. & confed. as distinct - as to Comp. Hawkins
 gives the stat. definition - but Confed. covers all the
 ground. Chitty's C. d. gives the same distinction
 of Com. law of Confed. & the stat. law of Comp.
 The stat. & decisions under it respecting Comp. have
 nothing to do with the Com. law doctrine of
confederacy - But the stat. did not cover the
 a comp. - to murder - arson - Burglary -

Nelson Just. 171. a precedent of Ind. of Comp. to murder

If the stat. put an end to all the doctrine of Comps
 wh. had prevailed at com. law - If it did how
 comes it the Ct. decided on Comps. not included
 in the stat. - It has been said that the Ct. had
 assumed the doctrine - that the legislated on the
 subject. It is wonderful after the portrait drawn
 of the Th. B. that they wd. not punish for stealing
 and other instances of
 bank notes, &c. not known at com. law - & yet
 those Ct. reprobated for dimensions of Comperages.
 Why shd. this doctrine be preached beyond its principle
 when the Ct. felt themselves bound by the com. law
 in other respects. The crown nomenclature concerned
 in the one set of cases than in that of Comps.

1 Heble 254 - moved in arrest of judgment.

It is not to strip of jurisdiction by stat. must be a comp.
 to indict & then ind. to defame. The Ct. said the
 crime is the comp. whether to defame or disgrace
 punish^{at com. law} tho' no ind. were had. - need not charge
 him criminally. The Ct. overlooked the statute &
 looked to the com. law.

The stat. then is out of the case & only
 to see if this is an offence at com. law wh.
 has been shown to have been adopted by the
 constitution. Hawkins, definition that a confes.
 wrongfully to injure a man are highly criminal
Christiam note to Pilkstone take his definition

can there be any uncertainty -

This Ind. cont. two counts - Both of w^h are crim. at com. law.

In a common case Hawkins w^d be auth. wth any other auth. - Here he does not advance the law as his own - He says there can be no doubt. The cases cited by Hawkins have been said not to bear out the definition arranged - To impoverish a person &c. The notes in the margin not by Hawkins but by Scott.

Blackstone states that the com. law ^{is to be known by} the reasoning of Judge &c. - In the cases w^h have been h^{er}efore? the Gent. has attempted to swim reasons & make reasons never given by the Courts - so in Hobbs 203 | Ventris 203. 304, King v Armstrong, Harrison &c. The obj^r was no abuse of justice but went & returned to the party himself - A continuance to cheat of m^o. But the gent. says that the true reason was to accuse him before a Ct. of Justice. This is giving a ground w^h is expressed states to be otherwise.

| Siderfin 68, Timberly & Child said to be a spiritual offence - The Ct. the Ind. is good. no attempt This Ct. has cos. of every illegal thing w^henly d^rugs may come to the party. How has then been interpreted by the Gent. - That the party might be charged with having the Bastard child. Widdon only aff? what said in the Poullerey case?

He meant only that the Justices had jurisdiction of the conspiracy for under their compass.

The word charge found in all the cases is said to mean a criminal charge - In Tremaine, P. C. ^(Tremaine case) shows it means defamation - to charge & accuse in the country before the king subjects of the king - nothing said of its being charged in Ct. The gist of the offence must be laid in the Ind. there it was to defame & to extort money.

2 Ld Raym 1167 and. Indictment of a charge to show that it need not be in a court

1 Str 144 - an. to ruin the trade of the cardmaker - not aff. the king or his revenue no court - pro aff. - nothing but to injure a single individual

King v Robinson & Taylor. There was

no crime in the marriage - But left to the jury to say whether the marriage was to injure Holland the Ind. says nothing of the marriage act - It states nothing but the marriage & individual injury to Holland - by the admissions by the defendt. couple say must be a combin. to injure a third person. - The Ct. charged the jury & state what - yet the jury say it was not what the Ct. did order, but it was to abuse the

3 Burr. 1320, King v Rospal. Comp. to make an
accusation ~~it~~ ^{it} said the J. did not give the
true reason - But it was a case of felony -

(1 Leach)

King v Eley, Comp. to ruin a Tailor - This said
to be a terrific principle - That two or more persons may
conspire to do. Is that like this ind - The comp.
amount to plot the destruction of the Tailor & to break
him up & ruin him - See the charge laid in the
indictment - This cannot affect two or
more joint. agreeing not to employ a Tailor - The
conspiracy must be to do a dishonest act.

Bogues & Alderfon 204 Is a case affecting
individuals, and the same principle prevailing

A comp. to injure individuals Mod. 320

Persons gave a man m^o. to marry a poor woman &
take her out of the parish. It was ^{a comp.} to charge an
parish with her support. - But the Jmt. say to do
a lawful act is a comp. -

Maul & Selwyn 68 Comp. to raise the
price of Stock - The J. held the Comp. was an
indictable offence - not levied ag. any particular
individual. - The Compls did not argue them
as they do here. - They said the individual injury
had not been pt out - But the Jmt. say it must
be public injury w^h makes the offence.

A mere comp. to inflict an injury on an individual is an indictable offence & is within the second count of the Indictment. in this case -

As to the first count - Not contended that the secret intent is punishable - But when he gains confed. it is no longer the secret intent - It punishes the confed. - How does that affect the first count - Here the intent carried into effect - The policy of the Stat. to inquire the case - The actual charge is a comp. to cheat. Tremain p. 6. 85-97. 94. 91. - The com. law doctrine of cheat must be by comp. or ^{by publication} false tokens - a cheat is not punishable at com. law except in one of those means - But said the act itself must be indictable if not if by comp. does not make it indictable - A comp. of public tokens are convertible - The form of the Ind. in Tremain ^(King or Records) comp. to cheat - Take away the comp. of the offence fall under no com. or stat. law. - No false token or privy token - The conspiracy &

that alone that constituted the offence

King v 1 Sed. 312. Ind. comp. for

a cheat in reading a deed ~~fully~~ - there was no token of any kind. No offence but for the comp.

26 Mod. 42 cheating at a foot race

This said to be under the Stat. of ^{the} answer is that this was ^{not} an Ind. of the Stat. but at com. law.

2 Ld Raym. 1179 Cheating in Lisbon

win. This c^d not have been supported but for the conspiracy. This case is said to have been

reported differently by diff. reporters & that no credit sh^d be given to it - This happens in many cases reporters differ - The c^d look to the result of the case there on no ground but to cheat by comp. w^h was in unison with other cases. - East. C^d says it a comp. ^{was} ^{shows that} ^{a cheat} ^{conjointly.} -

2 Burr. 1127, King v Wheatly, a cheat

affected by comp. is the same as a cheat effected by false token. - 2 Mansfield says, ^{then is no offence} ^{been} ^{no} ^{comp.} ^{no} false tokens used. It is not clear then that if there had been comp. it would be indictable. ^{if} ^{then} ^{be} ^{false} ^{tokens} ^{or} ^a ^{comp.} it is an offence - In 6 T. R. this law confirmed putting comp. & public token upon the same grounds

All the cases contain a perfectly consistent doctrine throughout - sometimes the judges throw out some obiter dicta. - The cases during the reign of Elizabeth cannot be bro't within the statute - The words to onov pleas has been fused on to apply them to all the cases during the reign of Elizabeth - The term maintenances will be found to relate to maintaining fel. free - Champerly -

The case reported by Moore - The case of Scrogg. The writ moved in the name of the party never could an offence to move in his own unless there be a conspiracy fel. - The cases not under the statute because they were the parties own fel. & must be by means of the conspiracy that made an offence

Scrogg's This was no offence unless it had been by means of the conspiracy

13 East. The case treated more as a probie than a conspiracy - The mere perpetration of a civil trespass to make it a comp. must be something of false - D. Ellenborough was one of the judges in the case in Maule & Helwys -

This case at bar is conspiracy within the

67.

principles laid down by D. Ellenborough.

Macklin's case. (4 Chitty C.D.) Comp. to injure the player - The crime was in the Comp. to break up his business - to destroy an innocent man - Do not prevent persons from hiring an actor - But ~~to~~ conspiring to injure the player & putting him down.

But in the case before the C. it is said the parties was in prop^o. of the property. The question of Breach of trust is not involved in the question before the C. - Larceny may be committed by a Shepherd of sheep in his prop^o. - This is a conspiracy to cheat & has nothing to do with a breach of trust.

The doctrine of Comp. to ^{be} taken from all the auth^s. - That Black & other writers have omitted to treat of the subject is no ev^d. that there was no such principle at com. law

Not only the Monarch who reigned, but the Judges, Court & reporters during a long period of time has been assailed. - Might with the same ^{propriety} ~~principles~~ assail D. Coke.

If there is to be judicial legislation on the subject - is it to be to make the law to accord with the principles of the Govt. on the other side or to let it be as contended for on the part of the prosecution? -

The diff^y in error was admitted then quite.

68.

If they were innocent they should never have
adopted the course they have by demurring
to the charge. - If they were innocent the
jury w^d have declared them so. Instead of wh^{ch}
they have rendered their guilt

(see op. p.)

Judgment Reversed, - and proceeds awarded