A REPORT

OF THE

CONSPIRACY CASES,

LATELY DECIDED AT BELLE AIR,

HARFORD COUNTY, MARYLAND;

COMPILED AND DIGESTED UNDER THE DIRECTION AND SUPERINTENDANCE OF

ROBERT GOODLOE HARPER,

ONE OF THE COUNSEL FOR THE PROSECUTION:

FROM THE WRITTEN EVIDENCE, HIS OWN NOTES, AND THOSE OF MR. MITCHELL AND MR. MURRAY,

ALSO OF

COUNSEL FOR THE PROSECUTION;

AND CAREFULLY COMPARED WITH THOSE OF

THE ATTORNEY GENERAL.

Præcipuum munus annalium reor, ne virtutes sileantur; utque pravis dictis factisque, ex infamia et posteritate, metus sit."—TACT.

It is the chief object of history to commemorate virtuous actions; and to restrain crimes, by the fear of present and future infamy.

BALTIMORE: PRINTED BY THOMAS MURPHY.

1823.

ADVERTISEMENT.

May 27, 1823.

THE Board of Directors of the office of Discount and Deposit of the Branch Bank of the United States in Baltimore, at whose instance the Report now offered to the public was prepared, and by whose direction it is published, deem it proper to state thus publicly the motives and reasons of their conduct, in relation to these Trials and to the Report, which they know have been misrepresented, and may be misunderstood.

On the 26th of August, 1819, the following letter and resolution were received at this office, from the president of the Bank of the United States:

"*Bank United States, August* 24, 1819.

SIR,

I now enclose you a Report of a Committee, which was this day agreed to by this Board, on the subject of your letter of the 13th instant.

I am, Sir, very respectfully,

Your obedient,

L. CHEVES, *Pres't.*

JOHN WHITE, Esq.

Cashier of the Office B. U. S. Baltimore."

The Committee to whom was referred the letter of the Cashier of the Office at Baltimore, requesting on the part of the Board of that Office, the advice and instructions of the Parent Board on the question of employing Counsel to aid the Attorney of the State of Maryland, in the pending prosecutions against the delinquent officers of the Office at Baltimore,

REPORT:

That it appears that a Grand Jury of the State of Maryland impannelled at Baltimore, have made presentments against several delinquent officers of the Office of the Bank of the U. States at Baltimore, and against delinquent officers of the City Bank,

Union Bank, and Mechanics' Bank, all of Baltimore. That the defendants in these prosecutions have employed the most eminent, if not all the eminent Counsel resident at Baltimore; and that the City Bank, being disposed to employ eminent Counsel not resident at Baltimore, to aid in the prosecution, has requested the Office at Baltimore to unite with them in retaining and paying such Counsel. That the acts with which these delinquent officers are charged, are such as strike deeply at the interests and security of all Banking Institutions, and are such as ought to be legally punishable, for the prevention of such offences. That it has been doubted whether a criminal prosecution can be sustained, under the existing laws. That it is of great importance that the question should be unequivocally settled, by a solemn legal adjudication; in order that, if they are now punishable in an adequate manner, the punishment of the law may fall upon the offenders, and by its example give that security which is the principal object of all criminal punishments. Or, if they are not so punishable, that the defect of the existing laws may be known, and Legislative wisdom called upon for a remedy. That, to this end and with these views, eminent talents ought to be exerted in these cases, to give just weight to the ultimate decision, whatever it may be. The Committee therefore submit for the consideration of the Board the following *Resolve:*

Resolved, That the Board of the Office at Baltimore be authorized and requested, to unite with the City Bank and any other Banks of Baltimore, in retaining eminent Counsel to aid the Attorney of the State, in the prosecutions aforesaid."

The indictments mentioned in these communications having been removed to Harford county for trial, early in the year 1820, at the instance of the parties indicted, a second communication, which follows, was received at this Office, on the 21st of August in that year.

"*Bank of the United States*, 18*th August*, 1820.

Sir,

Annexed you will please find an extract from the minutes, containing a Report of a Committee, this day adopted, on the subject of your letter to the President dated 8th inst.

I am Sir, very respectfully,

Your obedient servant,

JAMES HOUSTON, Assistant Cashier."

JOHN WHITE Esq. Cashier Office B. U. S. Baltimore.

At a meeting of the President and Directors of the Bank of the United States on the

18*th August*, 1820,

The following Report was adopted, viz.

The Committee on the State of the Offices, to whom was referred the letter of the Cashier of the Office at Baltimore, dated the 8th intant,

REPORT:

That in their opinion the documents referred to in the subpœna which has been served upon the Cashier, ought to be promptly furnished, and they recommend that, in his reply to the said letter, the President be instructed to declare it to be the opinion of this Board, that the Board of the Office at Baltimore ought, by a liberal reward, to procure adequate Counsel to assist in the prosecutions connected with this subject, in order that the authors of the frauds committed upon the Institution, if the existing laws will authorize it, be punished and, if not, that it may be distinctly seen, by a due management of the cases, by the Legislative authorities of the country, that their interposition is necessary to sustain the public morals, and protect the pecuniary interests of the country in such cases.

Extract from the minutes.

JAMES HOUSTON, Ass't. Cashier."

In December 1821, the decision of Harford county court, sustaining the demurrers to these indictments, was reversed by the court of Appeals; and the cases were remanded to the inferior court, for trial on the facts. On the 30th of November 1822, while they were depending there, a *third letter was received from* the Parent Board, which with its enclosure is here inserted.

"*Bank United States, Nov.* 28*th*, 1822.

JOHN WHITE, Esq. Cashier, Baltimore,

SIR,

Annexed, I transmit a Report of the Committee on the state of the Offices, adopted on 27th inst. requesting the *publication of* an authentic statement of the frauds committed at your Office, during the administration of J. A. Buchanan and J. W. M'Culloh.

I am very respectfully,

Your obedient servant,

THOS. WILSON, Cashier."

"At a meeting of the President and Directors of the Bank of the United States on the 26th November, 1822,

The following Report and Resolution, were read and adopted, viz.

The Committee on the State of the Offices to whom was referred a letter from David Alexander, Esq. Chairman of a meeting of the Stockholders of the Bank of the United States resident in South Carolina, enclosing a resolution of the said meeting,

REPORT:

That the resolution is in the following words, to wit:

Resolved, unanimously, that the President and Directors of the Parent Bank at Philadelphia, be requested to instruct the President and Directors of the Office of Discount and Deposit at Baltimore, to have published (after the trial of the parties concerned) a full and authentic statement from the documents in their possession, of the stupendous frauds committed at that Office during the period when J. A. Buchanan was President and J. W. M'Culloh, Cashier, subject nevertheless, previous to publication, to the inspection and revision of the Parent Board." That, in the opinion of the committee, the request of the said meeting of Stockholders is reasonable and ought to be complied with. The committee therefore offer for the consideration of the Board, the following resolution:

Resolved, That a copy of the said resolution be transmitted to the Office at Baltimore, with instructions to the said Office to comply therewith.

Extract from the minutes.

THOS. WILSON, Cashier."

The "full and authentic statement" required by this communication, was understood to mean a full report of the cases; including the evidence written and oral, the arguments of counsel, and the decisions: Nothing less than which could satisfy the requisition, or attain its object. Measures were therefore adopted, when the trials approached, to engage a skilful and experienced stenographer to attend the trials, and report the whole proceedings. As it was believed that a suitable person would be more likely to be found at Washington than any where else, a letter was written early in March, by the Cashier of the Baltimore Branch, to Mr. Richard Smith, the Cashier of the Branch at Washington, requesting him to find out and engage one. On the 5th of that month he answered as follows:

"*Office of Bank United States, Washington, March 5th,* 1823.

DEAR SIR,

Mr. Rind, editor of the George-Town Metropolitan, has consented to go to Belle Air to take the proceedings of the trial, expected to come on. He considers himself competent to the task, and I have been otherwise informed that he is so. He will not name any specific sum for his services; but will leave it to the liberality of the Bank, to grant him such compensation as he may deserve. I have told him, that his expenses there and back should be paid; and that if the trial did not come on, he still should be allowed for his trouble. If you wish me to engage him on these terms, be pleased to say so as soon as possible; and also to state the time it will be necessary for him to go on.

I am very respectfully,

Your obedient servant,

R. SMITH, Cashier.

JOHN WHITE, ESQ. *Cashier.*"

Being authorised in reply to engage Mr. Rind, on such terms as he might think reasonable, he wrote on the 14th the following letter and postscript, which were delivered in a day or two afterwards, by Mr. Brunet, the person whom the postscript mentions.

"*Office of the Bank U. States, Washington March 14th,* 1823.

DEAR SIR,

This letter will be handed to you by Mr Rind, the Gentleman who has undertaken to report the trials at Belle Air. I have made no arrangement with him respecting the compensation he is to receive—He prefers leaving it to the liberality of your Board to make him such allowances as he may merit.

I am very respectfully,

Your obedient servant,

R. SMITH, Cashier.

JOHN WHITE, ESQ. *Cashier.*

9 o'clock at night.

Mr. Rind requests me to state that his partner, Mr Brunet, whom he considers equally competent to the above business, will deliver this letter and perform the above service.

R. S. Cashier."

Mr. Brunet accordingly proceeded to Belle Air, when the trials commenced, which was about the 16th of March 1823, and en-

gaged, in taking notes for a report of the cases. This report, as was distinctly understood between him and Mr. White, was to embrace not only the evidence in all the cases, but the important points of the arguments of Counsel on both sides.

The evidence in the first case, which embraced by far the greatest extent and variety of matter, was closed on the 1st April, 1823. On that day Mr. Brunet left Belle Air, without any previous notice or intimation to Mr. White.

He had previously, however, applied for and received a small sum of money; and he left for Mr. White the following letter, without date, but apparently written on the day of his departure.

"MR. WHITE,

SIR,

The evidence in the cases are now at an end; and as business of the first importance requires that I should be at home on Thursday, I shall take the present opportunity of going to Baltimore. If (which I don't think needful) you want the argument in the case you will apply to the *Counsel*, I have no doubt but what they will furnish it. I have all the evidence *pro* and *con;* which I am glad of, as I should have been compelled to go to-morrow if they had not have closed it; even though I should have forfeited the sum I expect to make by the report, as it is likely the argument will not cease for several days. You will find out if the other cases will come on, write me directed to Baltimore—at any rate I will be here if possible on Friday or Saturday. I hope you will be assured that nothing but urgent business could cause me to go.

Your's respectfully,

J. BRUNET."

Mr. Brunet returned no more to Belle Air; nor was any thing heard from him, or of him or his notes. It being resolved to make a report of the cases, from the notes of the Counsel on both sides, as far as they could be obtained, and from the books and papers given in evidence; and one of the Counsel for the prosecution having undertaken, at the request of a Committee of the Branch Board, to direct and superintend this report; an attempt was made by his advice to obtain the notes of Mr. Brunet. For this purpose Mr. White wrote again to Mr. Richard Smith, on the 2nd May, 1823. An extract from Mr. Smith's answer follows:

"*Office of Bank United States, Washington, May 6th*, 1823.

DEAR SIR,

Mr. Brunet informs me that he has the notes of the testimony given on the late trial, and that in an hour's time, he could complete transcribing them. He professes ignorance of the bargain made with Mr. Rind, but told me yesterday that in the course of an hour he would let me know the price at which he would furnish them.

I am very respectfully,
Your obedient servant,
R. SMITH, Cashier.

JOHN WHITE, ESQ. Cashier."

On the 8th of the same month Mr. White wrote and transmitted to Mr. Smith, the following reply to this letter.

"*Office of Bank United States, May 8th*, 1823.

DEAR SIR,

I have received your letter of the 6th inst. and upon refering to that of the 14th March, delivered to me open by Mr. Brunet, and consequently containing terms which he deemed satisfactory, and to which this Office cheerfully acquiesced; I find you express yourself as follows: "This letter will be handed to you by Mr. Rind, the gentleman who has undertaken to report the trials at Belle Air. I have made no arrangement with him respecting the compensation he is to receive—He prefers leaving it to the liberality of your Board to make him such allowance as he may merit"—and you then add in a postscript, "Mr. Rind requests me to state that his partner Mr. Brunet whom he considers equally competent to the above business, will deliver this letter and perform the above service." In pursuance of this agreement on the part of this Office, there can be no objection to propose to Mr. Brunet, that if he will transcribe his notes and forward them to any friend here, to be submitted to the judgment of a competent person, for instance Mr. Harper who was present, this Office will faithfully comply with the tenor and spirit also of your agreement.

R. SMITH, Esq. Cashier."

On the 10th he received from Mr. Smith a letter on the same subject dated on the 8th, and enclosing an extract of one from Mr. Brunet. This extract and one from Mr. Smith's letter of the 8th,

which embraced other matters wholly unconnected with this, are as follows:

"*Office of Bank U. States, Washington, May* 8, 1823.

DEAR SIR,

Your letter of 7th instant is received. I enclose an extract of a letter this day received from Mr. Brunet. His demands are so exhorbitant, that they cannot for a moment be listened to. I have therefore demanded of Mr. Rind, a fulfilment of the bargain made with him; or a return of the money you advanced Mr. Brunet.

I am, very respectfully,

Your obedient servant,

RICHARD SMITH, *Cashier.*

JOHN WHITE, Esq. *Cashier, Baltimore.*"

"*Extract of a Letter from J. Brunet to R. Smith, Cashier, dated May 7, 1823.*

For the report written off, except the copies of documents furnished from the Bank Books, I must receive $1,000; or if the Board please, they may take my notes for $300. You sir, may be astonished at this demand, but if you will recollect the time I was from home, the neglect of my business, and trouble of writing it off, you will be satisfied it is not more than a fair compensation; if the Bank should refuse both the foregoing propositions, I shall have the report published.

Signed, J. BRUNET."

On the 15th of May, Mr. White received an answer from Mr. Smith, to his letter of the 8th, since which nothing further has been heard from, or of Mr. Brunet. This answer is as follows:

"*Office of Bank U. States, Washington, May* 13, 1823.

DEAR SIR,

Your letter of 8th instant has been shewn to Mr. Brunet, and he says he will finish transcribing the notes of the trial at Belle Air in a few days, and will take them on to Baltimore, when he will submit them to the arbitration of such persons as may be agreed on. He proposes Mr. Gales on his part.

I am, very respectfully,

Your obedient servant,

RICHARD SMITH, *Cashier.*

JOHN WHITE, Esq. *Cashier, Baltimore.*"

It having been perceived at Mr. Brunet's departure from Belle-Air, that his return could not be relied on, and that little dependence ought to be placed on the notes taken by him while he staid there, the Counsel for the prosecution were requested to take full notes of the argument then about to commence, as well as of the evidence in the subsequent cases; and it was afterwards found that their notes of the preceding evidence, taken in connexion with the written testimony, were so full and complete, as to leave little room for regreting the failure of Mr. Brunet. But as it was on every account indispensible, to render the report as complete and satisfactory as possible, both as related to the evidence and the arguments of Counsel, especially those of the Traversers, Mr. White, by the advice of General Harper, who had undertaken, at the request of the committee, the direction and superintendance of the Report, made application by letter to General Winder, Mr. Kell and Mr. Archer; the former of whom alone engaged in the argument, on the facts, and the two latter were understood to have taken very full notes of the whole proceedings. His letters, with the answers of those gentlemen, are inserted at length; in order that their reasons for declining compliance, may be given in their own words.

(COPY.)

"*Office Bank U. States, April* 16, 1823.

SIR,

I am directed to inform you, that a statement of the proceedings before the Court at Belle Air, is now preparing for publication, by order of the Board of Directors, under the superintendance of eminent Counsel, and your argument in defence of the parties indicted will be inserted, should you find it convenient to furnish it.

I am, Sir, very respectfully,

Your obedient servant,

JOHN WHITE, *Cashier.*

WM. H. WINDER, Esq.

Counsellor at Law."

A copy of the above under date the 18th, was directed to Mr. Kell.

"*Chatham Street, April* 16, 1823.

SIR,

I have received your note of to-day, and have only to state in reply, that neither my sense of duty, nor my avocations, permit me to contribute to the proposed publication.

I am, very respectfully,

Your obedient servant,

WM. H. WINDER.

JOHN WHITE, Esq. *Cashier.*"

"*April* 19*th*, 1823.

SIR,

In reply to your note of yesterday I have only to say, that professional engagements at this time would render it very inconvenient for me to retrace from memory (for I have no other reference) and commit to writing what I may have said in the cases alluded to—and a proper regard for my situation as one of the Counsel of the parties, and what is due to them, in my judgment, forbids me participating in any way in any publication to be made as announced by your note.

I am, respectfully,

Your obedient servant,

THOMAS KELL.

JOHN WHITE, Esq.

Cashier Office Discount and Deposit."

(COPY.)

"*Office Bank U. S. Baltimore, April* 24, 1823.

SIR,

The Board of Directors of this Office are preparing for publication, under the superintendance of eminent Counsel, a statement of the proceedings before the Court at Belle Air, and understanding that you made very full notes of the evidence and arguments, I am directed to request the favor of you to furnish them, for the purpose of making up the Report, and of being used to compare with the notes of other Counsel, so as to arrive at every attainable accuracy.

I am, Sir, very respectfully,

Your obedient servant,

JOHN WHITE, *Cashier.*

STEVENSON ARCHER, Esq.

Counsellor at Law."

"*Belle Air, Md. April* 29, 1823.

SIR,

I have received your letter dated 24th instant, informing me that the Board of your Office are preparing for the press "a statement of the proceedings" before the County Court of Hartford, in the trials lately depending against Buchanan and M'Culloh, and requesting me to furnish my notes, that the contemplated report may be made with all *attainable* accuracy.

I would with pleasure comply with your request, if I conceived I could do so with propriety. But my notes were taken as one of the defendants' Counsel, only intended to be used at the trial of the cause; and I do not feel myself at liberty, without the approbation of my clients, (whose wishes on account of my distance from them I cannot consult) to furnish these notes to the Office.

With assurances of respect,

I am your obedient servant,

STEVENSON ARCHER.

JOHN WHITE, Esq.

Cashier Office Discount and Deposit, Baltimore."

"*Office Bank U. States, April* 30, 1823.

SIR,

I am directed by Mr. Harper, who is the Counsellor engaged by this Office to compile a narrative of the recent trials at Belle Air, to solicit the loan of your notes for the purpose of comparison and correction.

I am, Sir, very respectfully,

Your obedient servant,

JOHN WHITE, *Cashier.*

THOMAS KELL, Esq."

"*Baltimore, May* 1*st*, 1823.

SIR,

The notes taken by me on the late trials at Harford, (the use of which is requested by your note of yesterday,) are not in my possession; they were, on the close of the cases, delivered to one of the parties; were they with me, the considerations mentioned in my former note, would preclude my sharing in any manner in the publication, intended by the Bank upon this subject.

General Winder, who has seen this, desires me to say, that he requests it may also be accepted as his answer to your note to him, if his pressing engagements prevent any other early reply.

I am, very respectfully,
Your obedient servant,
THOMAS KELL.

JOHN WHITE, Esq.
Cashier Office Discount and Deposit, Baltimore."

"*Office Bank U. States, April* 30, 1823.

SIR,

I am directed by Mr. Harper, who is the Counsellor engaged by this Office, to compile a narrative of the recent trials at Belle Air, to solicit the loan of your notes, for the purpose of comparison and correction.

I am, Sir, very respectfully,
Your obedient servant,
JOHN WHITE, *Cashier.*

WM. H. WINDER, Esq."

It being thought very desirable to insert into the Report the opinions delivered by the Judges; and Judge Dorsey, on being applied to, having promised to furnish his; Mr. White addressed the following letter to Judge Hanson, who had delivered a written opinion as that of himself and Judge Ward, in support of the decision of the Court in the first case.

(COPY.)
"*Office Bank U. States, April* 18, 1823.

SIR,

A statement of the proceedings before the Court at Belle Air, is now preparing for publication by order of the Board of Directors, under the superintendance of eminent Counsel; and I am directed to inform you that the decisions of the Court, which you delivered upon the demurrer, and upon the recent trial of the parties indicted, will be carefully inserted, should you find it convenient to furnish them.

I am, Sir, very respectfully,
Your most obedient servant,
JOHN WHITE, *Cashier.*

C. W. HANSON, Esq. *Associate Judge.*"

The following note from Mr. White, written on the 13th of May, will shew in what manner this application was answered.

"Upon the 29th of April, Judge Hanson's nephew called upon me with my letter in his hand, and said he was directed by Mr. Hanson to inquire if I had left it at his house on the 18th instant, as he had not then seen it. I replied, that I had sent it by the porter of the Bank to his house, the day after its date. He shortly afterwards returned and told me, that Judge Hanson said, he did not consider it proper to furnish his opinion in either case, or words to that effect. I told his nephew to tell Judge Hanson, I would thank him to write me a note to that effect. I have heard nothing since on the subject."

The compilers of the Report being thus deprived of all assistance from the notes of the Reporter originally employed, as well as from those of the Counsel for the Traversers, lost in some measure that which they expected from the Attorney General. He resides in the country, at some distance from Baltimore; and before a letter could reach him, requesting the use of his notes, and his assistance in preparing his own very able argument for the press, he had left home to attend the County Court of Anne Arundel, at Annapolis. In passing through Baltimore, however, he promised to furnish both, as soon as he could get home again. His notes have accordingly been sent, and were received in time to aid in preparing a very material part of the report. They have been carefully compared with that part which had been previously prepared, and are found to agree with it entirely, as far as they go. They are not, however, very full: for, as he justly remarks in his letter transmitting them, "his time was rather occupied in offering the testimony, than in taking notes of it."

A severe domestic calamity which occurred about the same time, and which indeed recalled him to Annapolis sooner than he expected, prevented him from preparing his argument; but after being drawn up from the notes of his associates, it has undergone his revision and correction.

No pains have been spared to make the report full and correct, both as relates to the arguments and the evidence. The notes of Mr. Mitchell and Mr. Murray, which are very copious and accurate, have been carefully compared, and constantly under the eyes of the compilers. Nothing of importance has been stated in which they did not agree. Indeed, no instance of material disagreement has been discovered. The notes of General Harper, which are

more concise, have also been constantly consulted, and are found in every instance to accord, as far as they go, with those of his two learned colleagues. The documentary part of the Report, as it went to be copied fair for the press, passed under the revision of Mr. White, the Cashier of the Baltimore Branch, who was himself a principal witness, in order to have it compared with the books and written documents in the Office. Indeed, a very great and important part of the evidence, consisted in these books and documents. As far as relates to this part, consequently, the most perfect reliance may be placed in the accuracy of the Report; and wherever recourse could be had to the witnesses, and there are but very few instances in which it could not; their testimony after it was copied fair, and before it went to the press, was submitted to their revision.* With all these aids and precautions, it is hoped and believed that every fact considered as material by either party, has been fully and correctly exhibited.

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* *Note.*—The only witnesses whose testimony as here published has not received their express sanction, are Mr. John Oliver, Mr R. L. Colt, Mr. D. A. Smith, Mr. A. A. Williams, and Mr. J. Meredith. Mr. Oliver was taken dangerously ill, before his testimony was prepared, and continued so till after it became necessary to print it.

Mr. Colt inspected and approved the first part of his testimony that appears in the report. Before the rest of it was prepared he went on business to New-York, and has not yet returned. But it has all been compared with a memorandum of his whole testimony, drawn up by himself, immediately after the trial; with which it perfectly agrees.

Mr. Smith does not reside in this city; nor is there any post office nearer to him. The first part of his testimony was not transmitted for his revision, because it related solely to the proof of a paper which the Court rejected. It was however prepared, like all the rest, from the notes of Mr. Mitchell and Mr. Murray. All his testimony on the part of the Traversers, after being thus prepared, was enclosed in a letter requesting him to revise it, and placed in the post office in Baltimore; which was understood, on inquiry, to be the proper manner of transmitting letters to him. No answer has yet been received; from which it is to be apprehended that he has never received the letter.

That part of his testimony which came out in the reply in evidence, on the part of the state, was not placed in the post office; because it was drawn up from a written statement, furnished by Mr. Smith himself, at the request of one of the Counsel for the prosecution, before he gave the testimony; which was merely an oral repetition of the statement.

The testimony of Mr. A. A. Williams and Mr. Meredith was put into the hands of those gentlemen more than ten days ago; but their avocations pre-

vented them from furnishing their corrections till the 25th instant; when it had been already printed. The corrections of Mr. Williams are merely verbal. Those of Mr. Meredith do not in the least vary any material fact. But to prevent all possibility of misapprehension or mistake, the testimony of both these gentlemen, as corrected by themselves, is subjoined to the Report.

REPORT

OF THE

CONSPIRACY CASES.

IN July 1819, Bills of Indictment were found in Baltimore City Court, the court of Criminal Jurisdiction for the city of Baltimore, against a number of persons, for conspiracies to defraud several Banks. Among the rest there was one against James A. Buchanan James W. M'Culloh and George Williams, for a conspiracy to defraud the Bank of the United States, through its Branch in Baltimore; of which Buchanan had been President, and M'Culloh Cashier. George Williams had been at the same time a director of the Parent Bank.

This indictment was founded on several discounts on Stock notes, to a very large amount, obtained by these persons in the Branch Bank, by indirect means as was alleged; and it is in the following words:

"State of Maryland, City of Baltimore, to wit:

The jurors for the State of Maryland, for the body of the City of Baltimore, on their oath present, that by an act of Congress of the United States, passed on the 10th day of April, in the year of our Lord 1816, at the city of Washington, entitled an act to incorporate the subscribers to the Bank of the United States—"A Bank was established and chartered as a corporation and body politic, by the name and stile of the "President Directors and Company of the Bank of the United States," with authority, power and capacity among other things to have, purchase, receive, possess, enjoy, and retain to them and their successors, lands, rents, tenements, hereditaments, goods, chattles, and effects of whatsoever kind

nature and quality, to an amount not exceeding in the whole $55,000,000. To deal and trade in bills of exchange, gold and silver bullion; and to take at the rate of 6 per. cent. per annum for upon its loans or discounts, and to issue bills or notes signed by the President and countersigned by the principal Cashier or Treasurer thereof, promising the payment of money to any person or persons, his, her or their order, or to bearer.

And that under, and by virtue of the power and authority given to the said directors by said act of Congress, an Office of Discount and Deposit of the said corporation was, at the time hereinafter mentioned, regularly and duly established in pursuance of the power contained in said act at the city of Baltimore, in the state of Maryland, aforesaid. And that George Williams, late of the city of Baltimore, merchant, was at the time hereinafter mentioned and before and afterwards one of the directors of the said Bank of the United States at Philadelphia, to wit, at the city of Baltimore aforesaid. And that James A. Buchanan, late of the city of Baltimore, merchant, was at the time hereinafter mentioned, and before and since, President of the said Office of Discount and Deposit of the said Bank of the United States, in the city of Baltimore. And that James W. M'Culloh, late of the city of Baltimore, gentleman, was at the time hereinafter mentioned, and before and afterwards, Cashier of the said Office of Discount and Deposit, of the said Bank of the United States in the city of Baltimore, to wit, at the city of Baltimore aforesaid. And that the said George Williams, so being one of the Directors of the said Bank of the United States, and the said James A. Buchanan, so being President of the said Office of Discount and Deposit, of the said Bank in the city of Baltimore, and the said James W. M'Culloh, so being Cashier of the said Office of Discount and Deposit, of the said Bank in the city of Baltimore, being evil disposed and dishonest persons, and wickedly devising, contriving and intending, falsely, unlawfully, fraudulently, craftily and unjustly, and by indirect means to cheat and impoverish the said President, Directors and Company of the Bank of the United States, and to defraud them of their monies, funds and promissory notes for the payment of money commonly called bank notes, and of their honest and fair gains to be derived under and pursuant to the said act of Congress, from the use of their said monies, funds and promissory notes, for the payment of money commonly called bank notes, on the 8th day of May, in the year of our Lord 1819, at the city of Balti-

more, aforesaid, with force and arms, &c. did wickedly, falsely, fraudulently and unlawfully, conspire, combine, confederate and agree together, by wrongful and indirect means to cheat, defraud and impoverish the said President, Directors and Company of the Bank of the United States, and by subtle, fraudulent and indirect means and divers artful, unlawful and dishonest devices, and practices to obtain and embezzle a large amount of money and of promissory notes, for the payment of money commonly called bank notes, to wit, of the amount and value of $1,500,000 current money of the United States, the same being then and there the property and part of the proper funds of the said President, Directors and Company of the Bank of the United States, from and out of the said Office of Discount and Deposit of the said Bank in the city of Baltimore, without the knowledge, privity or consent of the said President, Directors and Company of the Bank of the United States, and also without the privity, consent or knowledge of the Directors of the said Office of Discount and Deposit of the said Bank, in the city of Baltimore, for the purpose of having and enjoying the use thereof for a long space of time, to wit, for the space of two months, without paying any interest, discount or equivalent, for the use thereof, and without securing the payment thereof to the said corporation. And the more effectually and securely to perpetrate and conceal the same, that the said James W. M'Culloh should from time to time falsely and fraudulently state, allege and represent to the said Directors of the said Office of Discount and Deposit in the city of Baltimore, that such monies and promissory notes so agreed to be obtained and embezzled as aforesaid, were loaned on good, sufficient and ample security in capital stock of the said Bank, pledged and deposited therefor; and also, should from time to time make and fabricate false statements and vouchers respecting the same; and other property and funds of the said corporation, to be laid before and exhibited to the said Directors of the said Office of Discount and Deposit, of the said Bank in the city of Baltimore. And that the said George Williams James A. Buchanan and James W. M'Culloh, being such officers of the said corporation as aforesaid, did then and there in pursuance of, and according to the said unlawful, false and wicked conspiracy and confederacy, combination and agreement aforesaid, by indirect, subtle and wrongful, fraudulent and unlawful means and by divers artful and dishonest devices and practices, and without the knowledge, privity or consent of

the said President, Directors and Company of the Bank of the U. States, and without the privity, knowledge or consent of the Directors of said Office of Discount and Deposit of the said Bank in the city of Baltimore, obtain and embezzle a large amount of money and of promissory notes for the payment of money commonly called bank notes, the same being the property and part of the proper funds of the said corporation, from and out of their said Office of Discount and Deposit, in the city of Baltimore, to wit, the amount and value of $1,500,000 current money of the United States, for the purpose of having and enjoying the use thereof, and did have and enjoy the use thereof for a long space of time, to wit, for the space of two months, without paying any interest, discount or equivalent therefor, and without securing the payment of the said monies, and the said promissory notes, for the payment of money commonly called bank notes; and did then and there falsely craftily, deceitfully, fraudulently, wrongfully and unlawfully keep and convert the same to their own use and benefit, *without the knowledge*, privity or consent of the said corporation, and without the knowledge, privity or consent of the Directors of the said Office of Discount and Deposit in the city of Baltimore, and did then and there the more effectually to perpetrate and conceal the said conspiracy, confederacy, fraud and embezzlement, cause and procure *false and fraudulent representations, allegations, statements* and vouchers to be made and fabricated, and the same to be exhibited to, and laid before the Directors of the said Office of Discount and Deposit, in the city of Baltimore, by the said James W. M'Culloh as cashier of the said Office of Discount and Deposit, respecting the said monies and the said promissory notes for the payment of money so obtained and embezzled as aforesaid, in which said representations, allegations, statements and vouchers, it was then and there falsely and fraudulently represented, alleged and exhibited, that the said monies and promissory notes for the payment of money were loaned on good, sufficient and ample security, in capital stock of the said Bank, pledged and deposited therefor. When in truth and in fact no capital stock of the said Bank, and no other security was pledged or deposited therefor, as the said George Williams James A. Buchanan and James W. M'Culloh, then and there well knew; and that the said false, wicked, unlawful and fraudulent conspiracy, confederacy and agreement above mentioned; and the said false, wicked, unlawful and fraudulent acts done in pursuance thereof above set

forth, were then and there made, done and perpetrated by the said George Williams James A. Buchanan and James W. M'Culloh, in abuse and violation of their duty and the trust reposed in them, and the oaths taken and lawfully sworn by them respectively as such officers of the said corporation aforesaid. And that the said George Williams James A. Buchanan and James W. M'Culloh did then and thereby, falsely, wickedly, fraudulently, wrongfully and unlawfully empoverish, cheat and defraud the said President, Directors and Company of the Bank of the United States, to the great damage of the said President, Directors and Company, to the evil example of all others in like manner offending, and against the peace, government and dignity of the state of Maryland, &c.

And the jurors aforesaid, on their oath aforesaid, do further present, that the said George Williams so being one of the Directors of said Bank of the United States at Philadelphia, to wit, at Baltimore aforesaid; and the said James A. Buchanan so being President of the said Office of Discount and Deposit, of the said Bank, in the city of Baltimore; and the said James W. M'Culloh so being Cashier of the said Office of Discount and Deposit, of the said Bank in the city of Baltimore, being evil disposed and dishonest persons, and wickedly devising and contriving, and intending falsely, unlawfully, fraudulently, craftily and unjustly, and by indirect means to cheat and empoverish the said President, *Directors and Company of the Bank of the United States*, and to defraud them of their monies, funds and promissory notes, for the payment of money commonly called bank notes, and of their honest and fair gains to be derived under and pursuant to the said act of Congress, from the use of their said monies, funds and promissory notes, for the payment of money commonly called bank notes, afterwards, to wit, on the 8th day of May, in the year of our Lord 1819, at the city of Baltimore, aforesaid, with force and arms, &c. did wickedly, falsely, fraudulently and unlawfully conspire, combine, confederate and agree together by wrongful and indirect means to cheat, defraud and impoverish the said President Directors and Company of the Bank of the United States, and by subtle, fraudulent and indirect means and divers artful, unlawful and dishonest devices and practices to obtain and embezzle a large amount of money and promissory notes, for the payment of money commonly called bank notes, to wit, of the amount and value of $1,500,000 current money of the United States, the same being then and there the property and part of the proper funds of

the said President, Directors and Company of the Bank of the United States, from and out of the said Office of Discount and Deposit of the said Bank in the city of Baltimore, without the knowledge, privity or consent of the said President, Directors and Company of the Bank of the United States, and also without the privity, consent or knowledge of the Directors of the said Office of Discount and Deposit of said Bank in the city of Baltimore, for the purpose of having and enjoying the use thereof for a long space of time, to wit, for the space of two months, without paying any interest, discount or equivalent for the use thereof, and without securing the payment thereof to the said corporation; and that the said false, wicked, unlawful and fraudulent conspiracy, confederacy and agreement above mentioned were then and there made, done and perpetrated by the said George Williams James A. Buchanan and James W. M'Culloh, in abuse and violation of their duty, and the trust reposed in them, and the oaths taken and lawfully sworn by them respectively as such officers of the said corporation as aforesaid, to the great damage of the said President Directors and Company, to the evil example of all others in like manner offending, and against the peace, government and dignity of the state of Maryland, &c.

LUTHER MARTIN,
Attorney General of Maryland, and District Attorney of Baltimore City Court.

On the back of which said indictment is this endorsement—
True Bill, R. K. HEATH, *Foreman.*

TRUE COPY,
TEST, THOMAS HARWOOD,
Clerk Baltimore City Court."

Another of the indictments was against James A. Buchanan and James W. M'Culloh alone. It was founded on the alleged appropriation to their own use, by indirect means, of several Bills of Exchange, to the amount of £ 3350 sterling, drawn by various persons in the District of Columbia, in favour of Clement Smith Cashier of the Farmers' and Mechanics' Bank of Georgetown, and by him remitted to J. W. M'Culloh, in payment of a balance due from the Bank in Georgetown, to the Branch Bank in Baltimore. This indictment is in the following words:

"*State of Maryland, City of Baltimore, to wit:*

"The jurors for the State of Maryland, for the body of the City of Baltimore, on their oath present, that by an act of Congress of

the United States, passed on the tenth day of April, in the year of our Lord, one thousand eight hundred and sixteen, at the City of Washington, in the first session of the fourteenth Congress, entitled "An act to incorporate the subscribers to the Bank of the United States," a Bank was established and chartered as a corporation and body politic, by the name and style of "The President Directors and Company of the Bank of the United States," with authority, power and capacity among other things to have, purchase, receive, possess, enjoy and retain to them and their successors, lands, rents, tenements, hereditaments, goods, chattles, and effects of whatsoever kind, nature and quality, to an amount not exceeding in the whole, fifty five millions of dollars, to deal and trade in bills of exchange, gold or silver bullion; and to take at the rate of six per cent per annum for, or upon its loans or discounts, and to issue bills or notes, signed by the President, and countersigned by the principal Cashier or Treasurer thereof, promising the payment of money to any person or persons, his, her or their order, or to bearer. And that under, and by virtue of the power and authority given to the said directors by said act of Congress, an Office of Discount and Deposit of the said corporation was, at the time hereinafter mentioned, regularly and duly established in pursuance of the power contained in said act, at the City of Baltimore, in the State of Maryland, aforesaid. And that James A. Buchanan, late of the City of Baltimore, merchant, was at the time hereinafter mentioned, and before and since, President of the said Office of Discount and Deposit of the said Bank of the United States, in the City of Baltimore; and that James W. M'Culloh, late of the City of Baltimore, gentleman, was, at the time hereinafter mentioned, and before and afterwards Cashier of the said Office of Discount and Deposit, of the said Bank of the United States, in the City of Baltimore, to wit, at the City of Baltimore aforesaid. And that the said James A. Buchanan, so being President of the said Office of Discount and Deposit of the said Bank in the City of Baltimore; and the said James W. M'Culloh, so being Cashier of the said Office of Discount and Deposit, of the said Bank in the City of Baltimore, being evil disposed and dishonest persons, and wickedly devising, contriving and intending, falsely, unlawfully, fraudulently, craftily and unjustly, and by indirect means to cheat and impoverish the said President, Directors and Company of the Bank of the United States, on the thirty first day of January, in the year of our Lord one thousand eight hundred and nineteen, at the City of Baltimore,

aforesaid, with force and arms, &c. did wickedly, falsely, fraudulently and unlawfully, conspire, combine, confederate and agree together, by wrongful and indirect means to cheat, defraud and empoverish the said President Directors and Company of the Bank of the United States; and that, in pursuance of, and according to the said unlawful, false and wicked conspiracy, confederacy, combination and agreement, aforesaid, the said James W. M'Culloh did then and there fraudulently, secretly and contrary to the duty of his office, give and deliver over to the said James A. Buchanan, and the said James A. Buchanan did then and there fraudulently, secretly and contrary to the duties of his office, receive and take, for the purpose of having and enjoying the benefit and use of the same, for a long space of time, to wit, for the space of four months, without the privity, knowledge or consent of the said President, Directors and Company of the Bank of the United States, and without the knowledge, privity or consent of the Directors of the said Office of Discount and Deposit of the said Bank, at Baltimore, as aforesaid, and without securing the payment of the value or amount of the same, certain bills of exchange, the number whereof is unknown to the jurors aforesaid, drawn upon a certain person or certain persons in London, to the jurors aforesaid unknown, to the amount in the whole of six thousand and eighty pounds sterling, lawful money of Great Britain, and equal in value to twenty seven thousand twenty-two dollars and twenty-two cents, lawful money of the United States; which said bills of exchange, he, the said James W. M'Culloch had previously thereto received and taken, by virtue of his office of Cashier as aforesaid, in payment of a debt which was then and there due to the said President, Directors and Company of the Bank of the United States, by the Farmers' and Mechanics' Bank of Georgetown, in the District of Columbia, and which said bills of exchange were then and there in the custody and possession of him, the said James W. M'Culloh, he being such Cashier as aforesaid, as the property, and part of the proper funds of the said President Directors and Company of the Bank of the United States; and the more effectually to perpetrate and conceal the same, and in further pursuance of the said conspiracy, confederacy, combination and agreement, the said James W. M'Culloh did then and there, with the knowledge, privity and consent of the said James A. Buchanan, cause and procure false and fraudulent allegations, representations and statements, to be made and fabricated, and exhibiting the same to, and lay the same before the Directors

of the said Office of Discount and Deposit, of the said Bank of the United States, in the City of Baltimore, in which said allegations, representations and statements, the said Farmers' and Mechanics' Bank of Georgetown was designedly and falsely represented as owing the aforesaid debt, for the payment of which, the aforesaid bills had been previously received and accepted by him, the said James W. M'Culloh as aforesaid; and the same James W. M'Culloh being such Cashier as aforesaid, fraudulently and wickedly, and with the privity, knowledge and consent of the said James A. Buchanan, then and there caused and procured that no entry or notice of the receipt of the said bills of exchange, or of the delivery of them to the said James A. Buchanan, should be taken or made in the books of account of the said Office of Discount and Deposit, in the City of Baltimore, and that no credit for the said bills of exchange should be given to the said Farmers' and Mechanics' Bank of Georgetown in the said books of accounts; and that the said false, wicked, unlawful and fraudulent conspiracy, confederacy and agreement above mentioned, and the said false, wicked, unlawful and fraudulent acts, done in pursuance thereof, above set forth, were then and there made, done and perpetrated by the said Jas. A. Buchanan, and James W. M'Culloh, in abuse and violation of their duty and the trust reposed in them, and the oaths taken and lawfully sworn by them respectively, as such officers of the said Office of Discount and Deposit of the said Bank, in the City of Baltimore, as aforesaid; and that the said James A. Buchanan and James W. M'Culloh, did then and there, thereby falsely, wickedly, fraudulently, wrongfully and unlawfully empoverish, cheat and defraud the said President Directors and Company of the Bank of the United States, to the great damage of the said President Directors and Company of the said Bank of the United States, to the evil example of all others in like manner offending, and against the peace, government and dignity of the State of Maryland, &c.

And the jurors aforesaid, on their oath aforesaid, do further present, that the said James A. Buchanan, so being President of said Office of Discount and Deposit of the said Bank in the city of Baltimore as aforesaid; and the said James W. M'Culloh, so being Cashier of the said Office of Discount and Deposit, of the said Bank in the City of Baltimore, as aforesaid, being evil disposed and dishonest persons, and wickedly devising, contriving, and intending falsely, unlawfully, fraudulently, craftily and unjustly, and by indirect means to cheat and empoverish the said President

Directors and Company of the Bank of the United States, and to defraud them of their monies, funds and promissory notes, for the payment of money commonly called bank notes, and of their honest and fair gains, to be derived under and pursuant to the said act of Congress, from the use of their said monies, funds and promissory notes, for the payment of money commonly called bank notes, on the 31st day of March, in the year of our Lord one thousand eight hundred and nineteen, at the City of Baltimore aforesaid, with force and arms, &c. did wickedly, falsely, fraudulently and unlawfully conspire, combine, confederate and agree together, by wrongful and indirect means, to cheat defraud and empoverish the said President Directors and Company of the Bank of the United States, and by subtle, fraudulent and indirect means, and divers artful, unlawful and dishonest devices and practices, to obtain and embezzle a large amount of money and promissory notes, for the payment of money commonly called bank notes, to wit, of the amount and value of fifty three thousand dollars, current money of the United States of America, the same being then and there the property, and part of the proper funds of the said President Directors and Company of the said Bank of the United States, from and out of the said Office of Discount and Deposit of the said Bank in the City of Baltimore, without the knowledge, privity, or consent of the said President Directors and Company of the Bank of the United States, and also without the privity, consent or knowledge of the Directors of the said Office of Discount and Deposit of the said Bank in the City of Baltimore, for the purpose of having and enjoying the use thereof, for a long space of time, to wit, for the space of four months, without paying any interest, discount or equivalent for the use thereof, and without securing the re-payment thereof to the said Corporation; and that the said false, wicked, unlawful and fraudulent conspiracy, confederacy and agreement above mentioned were then and there made, done and perpetrated by the said James A. Buchanan and James W. M'Culloh, in abuse and violation of their duty, and the trust reposed in them, and the oaths taken and lawfully sworn by them respectively, as such officers of the said Office of Discount and Deposit of the said Bank in the City of Baltimore as aforesaid; to the great damage of the said President, Directors and Company, of the Bank of the United States, to the evil example of all others in like manner offending, and against the peace, government and dignity of the State of Maryland, &c."

LUTHER MARTIN,

District Attorney of Baltimore City Court.

On the back of which said indictment is thus endorsed, to wit—
True Bill, R. K. HEATH, *Foreman.*

TRUE COPY,
Test, THOMAS HARWOOD,
Clerk of Baltimore City Court."

A third Indictment was against the same two persons, James A. Buchanan and James W. M'Culloh alone; and was founded on the appropriation by them to their own use, by indirect means as was alleged, of the sum of $25,535 of the money of the Bank, under pretence of a Bill for that sum, drawn at sight by James W. M'Culloh, on Daniel C. Holliday, in favour of the house of S. Smith and Buchanan, of which James A. Buchanan was a member. It was alleged that no such bill ever existed. This Indictment is in the following words:—

"*State of Maryland, City of Baltimore, to wit:*

"The jurors for the State of Maryland, for the body of the City of Baltimore, on their oath present, that by an act of Congress of the United States, passed on the tenth day of April, in the year of our Lord, one thousand eight hundred and sixteen, at the city of Washington, in the first session of the fourteenth Congress, entitled "an act to incorporate the subscribers to the Bank of the United States"—A Bank was established and chartered as a corporation and body politic, by the name and stile of "the President Directors and Company of the Bank of the United States," with authority, power and capacity among other things to have, purchase, receive, possess, enjoy, and retain to them and their successors, lands, rents, tenements, hereditaments, goods, chattles and effects of whatsoever kind, nature and quality, to an amount not exceeding in the whole, fifty-five millions of dollars, to deal and trade in bills of exchange, gold or silver bullion; and to take at the rate of six per cent per annum for or upon its loans or discounts, and to issue bills or notes signed by the President and countersigned by the principal Cashier or Treasurer thereof, promising the payment of money to any person or persons, his, her or their order, or to bearer. And that under, and by virtue of the power and authority given to the said directors by said act of Congress, an Office of Discount and Deposit of the said corporation was, at the time hereinafter mentioned, regularly and duly established in pursuance of the power contained in said act, at the city of Baltimore, in the state of

Maryland, aforesaid. And that James A. Buchanan, late of the city of Baltimore, merchant, was at the time hereinafter mentioned, and before and since, President of the said Office of Discount and Deposit of the said Bank of the United States, in the city of Baltimore; and that James W. M'Culloh, late of the city of Baltimore, gentleman, was at the time hereinafter mentioned, and before and afterwards Cashier of the said Office of Discount and Deposit, of the said Bank of the United States, in the city of Baltimore, to wit, at the city of Baltimore aforesaid. And that the said James A. Buchanan, so being President of the said Office of Discount and Deposit of the said Bank in the city of Baltimore; and the said James W. M'Culloh, so being Cashier of the said Office of Discount and Deposit, of the said Bank in the city of Baltimore, being evil disposed and dishonest persons, and wickedly devising, contriving and intending, falsely, unlawfully, fraudulently, craftily and unjustly, and by indirect means to cheat and impoverish the said President, Directors and Company of the Bank of the United States, and to defraud them of their moneys, funds and promissory notes, for the payment of money, commonly called bank notes, on the fourth day of March, in the year of our Lord, one thousand eight hundred and nineteen, at the city of Baltimore aforesaid, with force and arms, &c. did wickedly, falsely, fraudulently and unlawfully conspire, combine, confederate and agree together, by wrongful and indirect means, to cheat, defraud and impoverish the said President Directors and Company of the Bank of the United States, and by subtle, fraudulent and indirect means, and divers artful, unlawful and dishonest devices and practices, to obtain and embezzle a large amount of money and of promissory notes, for the payment of money, commonly called bank notes, to wit, of the amount and value of twenty five thousand dollars, current money of the United States, the same being then and there the property, and part of the proper funds of the said President Directors and Company of the Bank of the United States, from and out of the said Office of Discount and Deposit of the said Bank, in the city of Baltimore, without the knowledge, privity or consent of the said President Directors and Company of the Bank of the United States, and also without the privity, consent and knowledge of the Directors of the said Office of Discount and Deposit of the said Bank in the city of Baltimore, for the purpose of having and enjoying the use thereof, for a long space of time, to wit, for the space of two months; and the more effectually and secure-

ly to perpetrate and conceal the same, that the said James W. M'Culloh should from time to time, falsely and fraudulently cause false entries to be made in the books of the said Office of Discount and Deposit, whereby it should be falsely and fraudulently stated and represented, and should falsely and fraudulently allege and represent to the said Directors of the said Office of Discount and Deposit in the city of Baltimore, that such monies and promissory notes, so agreed to be obtained and embezzled as aforesaid, were loaned on good sufficient and ample security; and that the said James A. Buchanan and James W. M'Culloh being such officers of the said Office of Discount and Deposit of the said Bank as aforesaid, he, the said James A. Buchanan, with the privity, knowledge and consent of the said James W. M'Culloh, and without the privity, knowledge or consent of the said President Directors and Company of the Bank of the United States, and without the knowledge, privity or consent of the Directors of the said Office of Discount and Deposit, of the said Bank in the city of Baltimore, did then and there, in pursuance of, and according to the said unlawful false and wicked conspiracy, confederacy, combination and agreement aforesaid, fraudulently obtain, draw out, take and embezzle, for the purpose of applying the same to his own proper use, and without securing the repayment of the same promissory notes, for the payment of money commonly called bank notes, and monies to a large amount in the whole, to wit, to the amount of twenty five thousand dollars, lawful money of the United States, the property and part of the proper funds of the said President, Directors and Company of the Bank of the United States, intrusted to and managed by the Directors of their said Office of Discount and Deposit in the city of Baltimore aforesaid; and that they, the said James A. Buchanan and James W. M'Culloh, the more effectually to perpetrate and conceal the same, and in further pursuance of the said conspiracy, confederacy, combination and agreement afterwards, to wit, on the day and year aforesaid, and at the place aforesaid, did procure, and cause to be made false entries on the books of the said Office of Discount and Deposit, falsely representing, and did then and there falsely and fraudulently represent and allege to the Directors of the said Office of Discount and Deposit of the said Bank of the United States, that the said promissory notes for the payment of money commonly called bank notes and monies were loaned on good, sufficient and ample security, to wit, on a draft for the payment of a large sum of money, that is to say,

a like a sum of twenty-five thousand dollars, drawn by a certain commercial firm then carrying on trade and commerce in the city of Baltimore, under the name and style of S. Smith and Buchanan, upon one Daniel C. Holliday, of the state of Louisiana, pledged and delivered therefor, which said draft had been remitted to the Office of Discount and Deposit of the said Bank of the United States, in the city of New Orleans, (which said Office last mentioned, was then and there legally established at New Orleans, to wit, at Baltimore aforesaid) and that the said Office of Discount and Deposit last mentioned, was truly and justly accountable therefor, whereas in fact and in truth, the said entries so made and procured were false; neither was such draft for the payment of money, nor was any other security pledged or delivered therefor, as they, the said James A. Buchanan and James W. M'Culloh then and there well knew; and that the said false, wicked, unlawful and fraudulent conspiracy, confederacy and agreement above mentioned, and the said false, wicked, unlawful and fraudulent acts done in pursuance thereof, above set forth, were then and there made, done and perpetrated by the said James A. Buchanan and James W. M'Culloh in abuse and violation of their duty and the trust reposed in them, and the oaths taken and sworn by them respectively, as such officers of the said Office of Discount and Deposit, of the said Bank as aforesaid; and that the said James A. Buchanan and James W. M'Culloh did then and there, thereby falsely, wickedly, fraudulently, wrongfully and unlawfully empoverish, cheat and defraud the said President Directors and Company of the Bank of the U. States, to the great damage of the said President, Directors and Company; to the evil example of all others in like manner offending, and against the peace, government and dignity of the state of Maryland, &c.

And the jurors aforesaid, on their oath aforesaid, do further present, that the said James A. Buchanan, so being President of said Office of Discount and Deposit of the said Bank in the city of Baltimore as aforesaid; and the said James W. M'Culloh, so being Cashier of the said Office of Discount and Deposit, of the said Bank in the city of Baltimore, as aforesaid, being evil disposed and dishonest persons, and wickedly devising, contriving, and intending falsely, unlawfully, fraudulently, craftily and unjustly, and by indirect means to cheat and impoverish the said President Directors and Company of the Bank of the United States, and to defraud them of their monies, funds and promissory notes, for the payment

of money commonly called bank notes, and of their honest and fair gains, to be derived under and pursuant to the said act of Congress, from the use of their said monies, funds and promissory notes, for the payment of money commonly called bank notes, on the 31st day of March, in the year of our Lord one thousand eight hundred and nineteen, at the city of Baltimore aforesaid, with force and arms, &c. did wickedly, falsely, fraudulently and unlawfully conspire, combine, confederate and agree together, by wrongful and indirect means, to cheat, defraud and empoverish the said President Directors and Company of the Bank of the United States, and by subtle, fraudulent and indirect means, and divers artful, unlawful and dishonest devices and practices, to obtain and embezzle a large amount of money and promissory notes, for the payment of money commonly called bank notes, to wit, of the amount and value of fifty-three thousand dollars, current money of the United States of America, the same being then and there the property, and part of the proper funds of the said President, Directors and Company of the said Bank of the United States, from and out of the said Office of Discount and Deposit of the said Bank in the city of Baltimore, without the knowledge, privity or consent of the said President, Directors and Company of the Bank of the United States, and also without the privity, consent or knowledge of the Directors of the said Office of Discount and Deposit of the said Bank in the city of Baltimore, for the purpose of having and enjoying the use thereof, for a long space of time, to wit, for the space of two months, without paying any interest, discount or equivalent for the use thereof, and without securing the repayment thereof to the said corporation; and that the said false, wicked, unlawful and fraudulent conspiracy, confederacy and agreement above mentioned were then and there made, done and perpetrated by the said James A. Buchanan and James W. M'Culloh, in abuse and violation of their duty, and the trust reposed in them, and the oaths taken and lawfully sworn by them respectively, as such officers of the said Office of Discount and Deposit of the said Bank as aforesaid; to the great damage of the said President, Directors and Company, of the Bank of the United States, to the evil example of all others in like manner offending, and against the peace, government and dignity of the state of Maryland, &c.

LUTHER MARTIN,
District Attorney of Baltimore City Court.

On the back of which said indictment is thus endorsed, to wit—
True Bill, R. K. HEATH, *Foreman.*

TRUE COPY,
TEST, THOMAS HARWOOD,
Clk. Baltimore City Court."

It will be remarked, that each of these Indictments contains two counts; one charging the offence in a more particular, and the other in a more general manner.

The Indictments being found, and the parties bound in recognizances to answer to the charges, they filed an affidavit on the 19th day of February, 1820, alleging that they could not have a fair and impartial trial in the City Court of Baltimore. On this affidavit they applied to the Court, for the removal of the records to an adjoining county for trial, pursuant to a provision of the Constitution; and an order was made on the same day, for their removal to the Harford County Court, to be held at Belle Air, on the second Monday of March following.

It was not till March or April, 1821, that these cases could be brought on at Belle Air. The Traversers (so the parties accused are styled, in criminal cases less than felony) demurred to the Indictments. Mr. Murray the Prosecutor for the State joined in the Demurrers, and the cases were very fully argued on the points of law. Mr. Murray was assisted by Mr. Wirt, Attorney General of the United States, Gen. Harper and Mr. Mitchell. Mr. Pinkney, Gen. Winder, Mr. Kell, Mr. Maulsby and Mr. Archer, were of counsel with the Traversers.

The objections relied on in support of the demurrers were twofold. First, that the Courts of the state had no jurisdiction of the case; because the alleged offence, if committed at all, appeared by the record to have been committed by officers of the Bank of the United States, in relation to their official duties; and secondly because this offence consisted in a conspiracy to cheat; and as cheating itself was not an indictable offence, unless effected by means of false tokens, which were not charged by these indictments to have been used, a conspiracy to cheat could not be indictable.

After a very full elaborate and extensive argument, in reply to these objections, and in support of them, the Court sustained the demurrers on the second ground, giving no opinion on the first; and pronounced judgement for the traversers. From this decision Mr.

Dorsey the Chief Judge dissented. The decision was supported by Mr. Hanson and Mr. Ward the Associate Judges in a written opinion, which will be found in the Appendix, No. 1.

Judge Dorsey also stated at length the grounds of his dissent, in a written opinion, which he filed in Harford Court. A copy of it from the record, marked No. 2, is contained in the Appendix.

Mr. Murray, the prosecutor for the state, sued out writs of error in all the cases, by which they were removed to the Court of Appeals at June term, 1821. Mr. Williams, then Assistant Attorney General,* withdrew from the prosecution, with the approbation of the court, on account of his relationship to one of the traversers; *and Mr. Murray was appointed to conduct it in the court of Appeals.* He immediately applied for writs of scire facias *ad audiendum errores,* against all the Traversers, which were ordered, and made returnable within the term. On the return of these writs the Traversers appeared, and an adjourned meeting was appointed in December, 1821, for the argument of all the cases.

In December, accordingly the argument came on. Mr. Pinkney, Gen. Winder and Mr. Raymond were counsel for the Traversers; and Mr. Murray for the state was again assisted by Mr. Wirt, Gen. Harper and Mr. Mitchell.

Four objections were taken on the part of the Traversers. First, that no writ of error lies for the state, in a criminal case.—Secondly, that these writs of error were not regularly sued out.—Thirdly, that the state court had no jurisdiction of the case, for the reasons urged in the first argument on the Demurrers. And Fourthly, that the acts charged in these indictments, did not amount to indictable offences.

The court consisted of Mr. Chase, the chief judge, Mr. Buchanan, Mr. Earle and Mr. Martin.

Mr. Dorsey having taken part in the decision below, could not sit; and as Mr. Johnson had then accepted the office of Chancellor, his seat was vacant.†

After hearing Mr. Murray and Mr. Mitchell on the part of the state, and all the counsel for the Traversers, the court declared

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* He had been appointed under a special act of Assembly, on account of the indisposition of Mr. Martin.

† It is to be remarked that the court of Appeals is composed of the Chief Judges of the six Judicial Districts, into which the state is divided.—One of them is commissioned as Chief Judge of this court

themselves satisfied on the two first points, and directed that the reply should be confined to the two last; which embraced the question of jurisdiction, and the question of crime.

At the conclusion of General Harper's argument in reply, they declared themselves satisfied on the point of jurisdiction, and desired Mr. Wirt, who was to close the case for the state, to confine himself to the question of crime. On the close of his argument, the Chief Judge declared it to be the unanimous opinion of the court, that all the objections were untenable, and that the judgement below ought to be reversed.

The opinion was afterwards delivered at length by judge Buchanan, and will be found in the Appendix, marked No. 3.

After the judgment of reversal was pronounced, Mr. Murray moved for writs of procedendo in all the cases, to remove them back to Harford County Court for trial. Some doubt at first existed, as to the power of the court of Appeals to award a procedendo in cases of that description; but the court after hearing counsel, and taking time for consideration, sustained the motion. Writs of procedendo, ordering the County Court of Harford to proceed to trial, were accordingly awarded and issued.

On their being returned and filed in that court, at March term, 1822, Thomas B. Dorsey, esq. then Attorney General, moved on the part of the state, for process to bring in the Traversers. Mr. Dorsey, the Chief Judge, was absent, through indisposition; and the associate Judges, Mr. Hanson and Mr. Ward, were divided in opinion on this motion. Mr. Ward was in favour of the motion—but Mr. Hanson refused it, because, as is understood, he thought that the court of Appeals had no power to award a procedendo.—It was consequently lost. At a subsequent period Judge Dorsey attended; when the court being full, the motion was renewed and prevailed.

At August term, 1822, George Williams appeared and offered ready for trial; claiming a right to be tried separately from James A. Buchanan and James W. M'Culloh, who were included with him in the same indictment. It was resolved by the court that the parties in such an indictment had a right to be tried separately: and that as the other Traversers were not yet before the court, George Williams might insist on having his trial immediately; unless the Attorney General could shew sufficient ground for a continuance. This was done by proving the absence of a material witness, who had been summoned; and the case, together with all the others, was continued to March term, 1823.

At that term George Williams did not attend in person, being confined by sickness; but James A. Buchanan and James W. M'Culloh appeared, plead not guilty to all the three indictments, and put themselves upon the court for trial, instead of the jury, under the act of November, 1809—ch. 144. This act enables all persons presented or indicted, for any offence whatever, to transfer their trials from the jury to the court, on the plea of not guilty: and authorises the court to decide on the whole merits of the case.*— The court on the application of the Traversers, and with the consent of the Attorney General, had waited two days for the arrival of some of their witnesses, who did not attend when first called.— On the 21st of March they attended, and the Traversers, James A. Buchanan and James W. M'Culloh declared themselves ready for trial in the case No. 44, which was the indictment against Buchanan M'Culloh and Williams, founded on the stock loans. The Attorney General had the right to take up first whichever of the cases he thought proper; but he gave them their choice, and they chose this. He was assisted by General Harper, Mr. Mitchell and Mr. Murray. The counsel for the Traversers were General Winder, Mr. Kell, Mr. Archer Mr. Maulsby and Mr. Raymond.

These gentlemen, who were also counsel for George Williams, expressed a willingness that he should be put on his trial at the same time; to which the Attorney General acceded. But Judge Dorsey doubted whether he could be legally tried in his absence.

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* This singular act, constituting a perfect and most dangerous anomaly in the law, provides "that it shall and may be lawful for any person presented or indicted, to submit to the court at his or her discretion, and the court to which such case shall be submitted is hereby authorised and empowered to decide on the whole merits of the case; which submission shall not be considered as an admission of the fact, either to find the person so submitting guilty of the offence charged, or charge him or her with the costs of the prosecution, if not guilty of the offence." It plainly and completely substitutes the court, acting by a mere majority, for a jury in all criminal cases whatever, at the option of the party indicted. Up to this time it had been uniformly confined in practice, to those cases of petty offence, with a view to which alone it was no doubt enacted † This it is believed is the first instance in which it has been applied to an offence of the higher class. Its true nature character and tendency having now been made known, it may be expected that its repeal or material modification, will be among the first cares of the Legislature.

† The general impression among the few persons who recollected or had ever been apprized of its existence, probably was, that it was so confined in its terms

The other two Judges were of a different opinion; and the counsel for this Traverser were told that he might be put on his trial, at the same time with the others. They however, on further reflection, declined this course; and the trial proceeded against Buchanan and M'Culloh alone.

The Attorney General stated the substance of the indictment, and presented a general outline of the evidence, by which it was to be supported. The Traversers, he said, were charged in substance with a combination or conspiracy, with fraudulent views, to get the money of the Bank to a large amount into their hands, by false and fraudulent devices, or indirect means, with intent to keep it two months without paying interest. The gist or essence of the offence, he observed, lay in the combination to effect this unlawful purpose, which the law and the indictment call "an embezzlement," by false pretences and deception, by which the law denominates "indirect means." The use which they intended to make of the money was wholly immaterial, and might have been omitted. It was no part of the offence, but merely the motive which induced them to commit the offence—The advantage which they expected to derive from its perpetration. The object, or intended use of the money, need not therefore be proved; but he apprehended that it would be clearly proved, by the testimony which he had to adduce; from which he believed it would appear that these parties, as to a large part of the money which they took from the bank, never intended to pay interest—Certainly on a large part of it interest never was paid.

As to the conspiracy, he added, which was the gist and essence of the offence, it must be fully proved; as well as the false and fraudulent devices by which the object was to be effected.

But on the nature of the proof it was important to observe, that direct or positive proof of a combination or agreement was not to be required. From the very nature of the case, such proof of a conspiracy could hardly ever be adduced; because witnesses were rarely suffered to be present at the making of such combinations. They must be made out by circumstances and inferences. Where the parties appeared to understand each other, and to act in concert for the attainment of a common object, a combination might be inferred. It was not necessary that they should act together, or that any direct intercourse between them should appear. It need not even exist. It was enough if they understood each other and played into each others hands; each performing his particular part in the general scheme.

In this respect, indeed, the proof of a conspiracy did not differ from that of any other offence, or of any other fact to be established before a jury—For in no case, criminal or civil, was a jury tied up to positive or direct proof. In all cases they might decide by inferences, properly drawn from facts in proof. This was what the law called presumptive evidence; on which the great excellence and benefits of the trial by jury mainly depended.

Having said thus much of the nature of the charge, and the general mode of proof, he proceeded to present a brief statement of the facts which he expected to establish.

After proving, he said, the incorporation and organization of the Bank of the United States, and of its Branch or Office of Discount and Deposit in Baltimore, he should give evidence of the appointment of the traversers Buchanan and M'Culloh as President and Cashier of the Branch; the former officer being appointed by the Directors of the Branch, and the latter, the Cashier, by those of the parent bank. He should then prove the appointment of the traverser George Williams, as a director of the parent bank. Having established these preliminary facts, he should produce the bye-laws and resolutions of the parent board, which had relation to this subject; and then proceed to prove by witnesses, and the books and records of the Branch Bank, that in August 1817, soon after the resolutions of the parent board authorizing the Offices of Discount and Deposit, commonly called the Branch Banks, to grant loans on pledges of the stock of the bank, the house of S. Smith and Buchanan, of which the traverser Buchanan was the active partner, engaged with the traversers M'Culloh and Williams, in a very extensive speculation in the stock of the bank, for the purposes of carrying on which they drew from the Baltimore branch very large sums, at different times, to the amount in the whole of more than 1,510,000 dollars, on notes drawn and endorsed by themselves, and in some instances not endorsed at all. That all these notes were discounted by the traversers Buchanan and M'Culloh, by their own authority, on pretence of pledges of stock which never were made, and which they never had it in their power to make, to any thing like the amount of the loans; rating all their stock at the highest advance, at which the branches had ever been permitted to grant loans on stock. That when some of the directors of the branch manifested a disposition, to enquire into the particulars of these loans, they were informed by the traversers, Buchanan and M'Culloh, that it was executive business, confided to the

president and cashier, with which the branch directors had nothing to do: That all further enquiry was thus prevented, and the loans went on; the notes being from time to time renewed, as the convenience of the parties required; or their amount being included with the interest or a large part of it, in new notes of the same description: That this operation was continued and extended till 12th November, 1818, when the last renewals took place, on notes bearing date on the 2d of that month, and amounting to more than 1,540,000 dollars, of which a considerable part arose from discounts on former renewals, left unpaid, and included from time to time in the new notes: That a little before this time the parent board began to feel some alarm, about the state of stock loans in the Baltimore Branch, and passed a resolution in general terms, which was calculated to draw forth explanations on the subject: That to evade this call, and conceal the real state of these loans, a false entry was made in the books of the bank, by the express order of the traverser M'Culloh, the cashier, and false statements were made, at a subsequent period, by him and the traverser Buchanan, which they presented to the parent board, and which, corresponding with the false entry, were calculated and intended to conceal the true amount of these loans on pretence of stock, and to represent the greater part of them as having been made in the usual manner, by discounts on endorsed notes, approved by the branch board: That at length the true nature and extent of the business came to light, when the traversers came to a settlement with the parent bank, and gave such security as was in their power for the sum of 1,540,000 dollars, being a part only, though much the greater part, of what they owed: and that finally, the security having proved greatly insufficient, the bank lost nearly one half of this immense sum, consisting of the principal *and in part of the* interest of the loans thus obtained from them, without their consent or that of the branch directors, their agents for such purposes.

This he said was a general and brief outline of the case, as it would appear on the proof; which he would now proceed to adduce.

The witnesses for the state were then called and sworn.

The Attorney General first offered evidence of the incorporation establishment and organization of the parent bank, and of the organization of the Baltimore branch: but these facts were all admitted, on the part of the traversers; as were also the appointments of George Williams as a director of the parent bank, and

of James A. Buchanan as president, and James W. M'Culloh as cashier of the Baltimore branch. These three appointments took place in 1816, and the traversers continued in their respective situations till some time in May 1819. It appeared that James W. M'Culloh was removed on the 20th May 1819; on which day he was succeeded by John White, the present cashier.

The Attorney General then gave in evidence and read the 4th and 5th articles of the rules and regulations of the parent bank, for the government of the offices of Discount and Deposit, which regulate the appointment and prescribe the duties of the cashiers. They are as follows:

"*Art.* 4. The Directors of the Bank of the United States shall appoint the Cashiers of the Offices of Discount and Deposit."

"*Art.* 5. It shall be the duty of the Cashier, carefully to observe the conduct of all persons employed under him, and report to the board such instances of neglect, incapacity, or bad conduct as he may discover in any of them; daily to examine the settlement of the cash account of the office; take charge of the cash, and whenever the actual amount disagrees with the balance of the cash account, report the same to the President and Directors without delay; to attend all meetings of the board; keep a fair and regular record of its proceedings; give such information to the board as may be required; consult with committees when requested, on subjects referred by the board; and also to perform such other services as may be required of him by the board."

He also produced and read the 12th, 14th, 15th and 16th articles, which relate to discounts, and run thus:

"*Art.* 12. There shall be at least one discount day in each week, when the Directors shall be assembled; a majority of the members shall be required to form a quorum, except for the purpose of settling discounts, for which five shall constitute a quorum, and no bill or note shall be discounted the unexpired term of which exceeds sixty days."

"*Art.* 14. All bills and notes offered for discount shall be laid before the Board of Directors by the Cashier on the days assigned for discount, together with a statement of the funds and situation of the office, for their information."

"*Art.* 15. Discounts shall not be made upon personal security without two responsible names (the firm of a house being considered as one name only;) but if stock of the Bank of the United States, Funded Debt of the United States, or such other property as

shall be approved by the board, be deposited and pledged to an amount sufficient to secure the payment, with all damages, one *responsible* name may be taken. But no accommodation note (i. e. a note, the proceeds of which are to be placed to the credit of the drawer) shall be discounted, unless its payment be secured by a deposit of the Stock of this Bank, or of Funded Debt of the United States, or such other property as shall be approved by the board; together with an express authority to the bank to sell the deposit in case of non-payment at any time after the note shall become due."

"*Art.* 16. On each application for discount, every Director who may be present, shall be held to give his opinion for or against the same. And no discount shall be made without the consent of three fourths of the Directors present; and all notes and bills discounted shall be entered in a book, to be called *The Credit Book*, in such manner as to discover to the board, at one view, on each discount day, the amount which any person is discounter, or is indebted to the office, either as payer or as endorser."

He then gave in evidence the 17th article relative to overdrawings, in the following words:

"*Art.* 17. On every discount day, the name of every person who shall have overdrawn the office since the last discount day shall be reported to the board; and no person while he remains an overdrawer, shall have any note or bill discounted by the offices. And in no instance will this bank give a release or discharge to any debtor when the debt arises from an overdraft. And every officer who shall knowingly suffer an overdraft to be made on the office, without communicating it to the President and Cashier, shall be dismissed from the service of the office."

The resolutions of the parent board of December 18th and 27th, 1816, July 25th and August 26th, 1817, October 20th, 1818, and of January 22d and February 1st and 19th, 1819, were then produced and read in evidence, from the original minute book of the bank, proved by Peter Benson, one of the clerks, who attended for that purpose. They are as follow:

"DECEMBER, 18, 1816.

"*At a meeting of the Directors of the Bank of the United States, on Wednesday the 18th December*, 1816, *it was*

RESOLVED, That on the thirty-first instant the board will proceed to discount notes or bills having not more than sixty days to run, and made payable to the Bank of the United States, secured

by a deposit of an equal amount of the stock of this bank, or an equal amount in public debt, at 90 per cent upon the par value thereof, with power to sell and transfer the said stock and debt, in default of payment, when due, of the notes which may be discounted as aforesaid; and that the respective boards of directors of the Offices of Discount and Deposit at Boston, New York and Baltimore, be authorized to discount in like manner upon the same terms and conditions, and to an extent not exceeding one tenth of the amount of the subscriptions to the capital of the bank at their respective places.

From the minutes,

JONA. SMITH, Cash'r."

27TH DECEMBER, 1816.

"RESOLVED, That the loan which may be effected, in conformity to the resolution of this Board passed on the 18th instant, be regulated in the following manner; and the President and Cashier be authorised to accept notes for the purposes therein mentioned, from day to day, from the 31st instant to the 23d January ensuing inclusive, upon the terms and conditions stipulated in the resolution above mentioned [to restrict the discount of 10 per cent. on the subscription exclusively to stockholders, or to withhold the same altogether, as circumstances, &c. may require] and in the manner herein directed.

1st. The loan to be effected for the accommodation of the stockholders exclusively, and to the amount of their respective proportions of the payments in coin, on account of the second instalment of the capital of the Bank.

2d. The Notes to be accepted shall all be dated on the 1st day of January next, and payable 60 days after date, including the interest thereon.

3d. That the stock to be deposited as a security for the payment of the notes, shall be transferred in trust to the Cashier of this bank, or to the Cashiers of the Offices of Discount and Deposit respectively, and their successors in office; and the discounters shall be required to sign a special agreement, stating the terms and conditions of the loan; and authorizing the President and Directors forthwith to sell the pledge, in such manner as they shall deem most advan

tageous, immediately upon the failure to pay the notes on the last day of grace, in specie or bills of this bank.

4th. And the loan before mentioned shall be made only to stockholders paying in full the second instalment on the shares by them respectively held in this bank.

JULY 25TH, 1817.

The following Preamble and Resolution was adopted:—

WHEREAS it may be convenient and desirable to stockholders of the Bank United States, or other persons holding funded debt of the United States, to obtain temporary loans upon their notes, made payable to the Cashier of the Office of Discount and Deposit at the place of their residence, and secured by a pledge of stock of this bank, or funded debt of the United States at the par value thereof, equal to the amount of the required loan: Be it therefore

RESOLVED, That the offices of this Bank be respectively authorized to grant such loans, until otherwise ordered by this Board;—that the weekly statements of such offices shall exhibit the amount of such loans, distinct from the amount of bills and notes discounted; and that blank powers of attorney to transfer and sell the stock or debt so pledged, in conformity to the powers used for similar loans obtained of this bank, but with such modifications as the substitution of the offices for the bank may require, be transmitted to the offices respectively for that purpose.

26TH AUGUST, 1817.

On motion, RESOLVED, That the substitution of money in lieu of funded debt, in the payments to the capital stock of this Bank, and the redemption of upwards of thirteen millions of the funded debt proportion of the capital stock, by the Commissioners of the Sinking Fund, renders it necessary to extend the discounts of the bank in proportion to the increase of the monied capital, in order to afford a reasonable dividend to the stockholders; that as no better security can be offered than the stock of the bank, at a safe and reasonable valuation; and as there is good reason to believe that the banks in New York and elsewhere have loaned upon the stock of this bank at the rate of $120 per share, and perhaps more, and of course that little or none can, under the existing regulations, be expected to be offered to this bank, when the actual market value is so much above par; therefore it is expedient that the loans on the stock of the bank be extended to the rate of $125 per share, upon notes to that amount, *with two approved names.*

Extracts from the Minutes.

JAMES HOUSTON, Ass't. Cashr."

"OCTOBER 20TH, 1818.

"RESOLVED, That the Cashier be directed to prepare and lay before this board, a statement of the existing discounts upon notes, for the payment of which public or corporate stocks of any kind may have been pledged, together with a list of the said notes, the names of the drawers and endorsers, and the amount and description of stock pledged for the payment of the said notes respectively: also that it be the duty of the Cashier, to require of the Cashiers of the respective offices, whose statements exhibit any such discounts, a like statement, list and description.

RESOLVED, That the Cashiers of the respective offices, at which discounts on the collateral security of stock of this bank may have been granted, be instructed to inform those who may have borrowed, at a rate exceeding the par value thereof, that a reduction of *twenty-five per cent* of the excess will be required *every* 60 *days*, until the whole of the said excess shall be extinguished; or that any such borrower may at his option, pledge such an additional amount of the funded debt of the United States, or Stock of this bank, at the par value thereof, as shall be equal to the amount of such excess.

RESOLVED, That it shall be the duty of the Cashier of this bank, to give notice to the respective borrowers of this bank, on endorsed notes discounted on the collateral security of the stock of this bank, for any amount exceeding the par value thereof—that the said amount will be required to be paid or secured, in the manner prescribed in the preceding resolution."

"22ND JANUARY, 1819.

"*Whereas it is expedient to prevent any improper transfers of the Stock whereby the security for the debts to the Bank might be lessened, therefore*

"RESOLVED, That no discount shall be made or renewal on stock, or any other discount or any substitution of a note or hypothecation made or renewed at this Bank, or any of its Offices of Discount and Deposit, without each discount or renewal being first presented to the Board of Directors of this bank or its offices, as the case may be, and approved by the Board of Directors, agreeable to the Bye Laws; and that any resolution authorizing discounts in any other manner, be and the same is hereby repealed, and that a copy of this resolution be forthwith transmitted to each of the offices of Discount and Deposit."

"FEBRUARY 1ST, 1819.

"1st. RESOLVED, That no new loan shall be made on stock of any kind, at this bank or any of its offices.

2nd. That in no case when a loan has been made on the stock of this bank, shall a transfer of such stock be made but with the approbation of the Board of Directors, of the bank or office where the loan was made; nor unless at least ten per cent of the amount thereof be paid to the bank or the office at which such loan was made.

3rd. That no transfer shall be effected upon any stock, upon which a greater amount than the par value shall have been discounted, until such excess shall have been paid off or secured to the satisfaction of this board, or the board of that office from which the discount was obtained.

4th. That on and after the 9th inst. a reduction of not less than five per cent shall be made, on all notes offered for renewal, which notes shall have been discounted on the stock of this bank, at this bank: and that a like reduction be made at all the offices of Discount and Deposit of this bank, to commence in ten days after the receipt of this resolution; unless a reduction; equal to, or greater than the above named five per cent, shall have been voluntarily made on such notes, before they are presented for renewal."

"FEBRUARY 19TH, 1819.

"RESOLVED, That the Cashier of the Office of Discount and Deposit at Baltimore be, and he is hereby required to transmit to this board, as early as practicable, a list of all the notes now discounted at that office, with the names of payer and endorser on each note; also designating in said list all notes which are discounted with an hypothecation of stock, for securing the payment of such notes; and also designating the kind of stock, and the rate at which such stock has been hypothecated; together with a copy of the instrument of writing, by which such hypothecations have been made."

The ledgers containing the customers' accounts of the Branch at Baltimore were then produced and offered in evidence, to prove the discounts obtained by the Traversers. To this it was objected, that the ledgers were not the acts of these parties, nor the original evidence of the transactions to which they related. But a notice to the Traversers being given in evidence, to produce their bank books, and the original notes which had been discounted and taken up; and it being also proved by P Janvier one of the book keepers, who had settled the bank book of S. Smith and Buchanan on the 19th January 1819, that it corresponded with the ledger; this ob-

jection was waived; and it was finally agreed, that all the original books of the Branch should be received in evidence, for both parties, and might be introduced and used as wanted.

John White, the present Cashier, was then called and examined by the attorney general. From his testimony and that of the book keepers, who were examined at the same time, and by reference to the books of the Branch Bank it appeared:

That on the 12th of August, 1817, a note of S. Smith & Buchanan at 90 days, for $540,000 without any endorser, was discounted for them, as a note secured by a pledge of stock. This note fell due on the 10th and 13th of November. That is, it fell due on the 10th; but three days of grace being allowed, it was not payable till the 13th.

That on the 13th of November 1817, another note drawn by them for $548,594 64 at 90 days, and endorsed by George Williams was discounted for them as a stock note, being obviously the renewal of the note of August 12th, with the discount or interest included: this note, including the days of grace, was payable February 14th 1818.

That on the 14th of February 1818, another note was discounted for S. Smith & Buchanan, for $550,000 at 90 days. This note also was endorsed by George Williams, and was discounted as a stock note, or a note secured by a pledge of stock. It seemed to be a renewal of the note of November 13th, of which no further trace could be discovered; but it included a part only of the interest: and that this note of February 14th, although not payable till the 17th or 18th of May, was taken up and extinguished on the 2d of March.

Mr. White stated that this note of $540,000, with its renewals, made no part of the stock arrangement, in which the Traversers engaged about the same time, and which was the subject matter of the present trial. That transaction he then proceeded to explain, in the following manner; with the assistance of the book-keepers and the original books.

It embraced a series of loans, on stock notes, or notes represented as being secured by pledges of stock, for each of the three Traversers.

CLASS No. 1.

Those of Buchanan were in the name of S. Smith & Buchanan, and commenced on the 5th August 1817, by a note of S. Smith & Buchanan, endorsed by Dennis A. Smith, for $30,000, at 90 days, which was discounted for

them on that day; and renewed for the same sum on the 6th of November, with the endorsement of the Traverser George Williams, for 90 days. On the 8th of February 1818, this note was again renewed, for the same sum, at 90 days, by their note without any endorser; which was payable on the 11th May 1818. This note of August 5th, 1817, with its renewals, formed Class No. 1, in the series of S. Smith and Buchanan.

CLASS No. 2.

The second Class commenced on the 13th of June 1817; when a draft of Lemuel Taylor for $39,500, at 90 days, on M'Ewen Hall & Davidson of Philadelphia, in favour of S. Smith & Buchanan and endorsed by them, was discounted for their account. This loan was renewed on the 11th Sept. following, by the note of S. Smith & Buchanan at 90 days, for the same sum without any endorser. This note was discounted for them as a stock note. On December 13th 1817, it was renewed for the same sum, at 90 days, with the endorsement of the Traverser James W. M'Culloh; and on the 16th of March 1818, it was again renewed by James W. M'Culloh's note at 90 days, for the same sum, endorsed by S. Smith & Buchanan. This terminated the second class.

CLASS No. 3.

The third commenced on the 30th of August, 1817, when the note of Hollins and M'Blair, at ninety days for $280,000, and endorsed by S. Smith and Buchanan, was discounted for them as a stock note.

It was renewed on the 1st of December, 1817, by a note of Geo. Williams for $285,000, at ninety days, endorsed by S. Smith and Buchanan, and on the 3d of March 1818, it was again renewed, with the same drawer and endorsers, at sixty days for $288,000. These two renewals included interest to the amount of $8,000.

And on the 5th of May, 1818, this note was again renewed, with the same drawer and endorsers, at five months, for the same sum of $288,000, which terminated the third class.

CLASS No. 4.

The fourth commenced on September 5th 1817, and was confined to one note for $165,000, at ninety days. This note was drawn by George Williams and endorsed by S. Smith and Buchanan, for whose use it was discounted as a stock note.

CLASS No. 5.

The fifth class was also confined to one note, for $47,000, at ninety days; which bore date on the 11th of September, 1817, drawn by George Williams, endorsed by S. Smith and Buchanan and discounted as a stock note for their use.

CLASS No. 6. The sixth class commenced on the 6th of December, 1817, with a note of that date for $215,000, at ninety days, drawn by George Williams, endorsed by S. Smith and Buchanan, and discounted for them.

It appeared to be a renewal of No. 4, for $165,000, and No. 5, for $47,000, making together $212,000, which, with the addition of $3000, apparently for part of the interest, made up $215,000, the amount of this new note.

It was renewed on the 9th of March, 1818, for sixty days, with the same drawer and endorsers, and the addition of $2,000, apparently for part of the interest; so as to make the new note amount to $217,000. This completed the sixth class.

CLASS No. 7. The seventh consisted of a note for $247,000, bearing date on the 11th of May, 1818, drawn by S. Smith & Buchanan at five months, and discounted for them without any endorser. It appeared to be a renewal and continuation of No. 1, for $30,000, and No. 6, for $217,000, which both fell due on that day.

CLASS No. 8. The eighth class commenced November 21st 1817, with a note of that date for $48,000, drawn by S. Smith and Buchanan at ninety days, endorsed by George Williams and discounted for the drawers as a stock note. It was renewed for the same sum, and with the same drawers and endorser, on the 21st of February, 1818, for sixty days: and again on the 25th of April, 1818, for thirty days, which completed this class.

CLASS No. 9. The ninth was composed of a single note, at sixty days, for $21,000, drawn on the 17th of April, 1818, by James W. M'Culloh, endorsed by S. Smith & Buchanan, and discounted for them as a stock note.

CLASS No. 10. The tenth commenced on the 22d of August, 1817, with a note of that date for $215,000, at ninety days, drawn by S. Smith & Buchannan, and discounted for them as a stock note, without an endorser.

It was renewed with the addition of $3,000, apparently for interest, on the 22d of November, 1817, by a note of George Williams, at sixty days, in favour of S. Smith & Buchanan and, endorsed by them, for $218,000. This last note was again renewed, on the 23d of February, 1818, by a note at sixty days, drawn and endorsed as the former, with the addition of $32,000: so as to raise it

to $250,000—and on the 27th of April, 1818, this note of $250,000 was renewed for the same sum, by a note at thirty days, with the same drawers and endorsers. This completed the 10th class.

CLASS No. 11.

The eleventh consisted of a note for $370,500 dated on the 26th of May 1818, and drawn by George Williams at 6 months, in favor S. Smith & Buchanan, by whom it was endorsed. It was discounted for them,

To renew Class No. 2, for	$ 39,500	
No. 8,	48,000	
No. 9,	21,000	
No. 10,	250,000	
		358,500
and it included an additional sum as a new loan on stock of - - - - - - -		12,000
		$370,500

CLASS No. 12.

The twelfth class embraced six notes, all bearing date on the 2nd of November 1818, at 4 months—

1. Drawn by S. Smith & Buchanan and endorsed by George Williams, - - - - - -	$ 11,426 77
2. Drawn by S. Smith & Buchanan and endorsed by George Williams and James W. M'Culloh, -	325,000 00
3. Drawn and endorsed as the second, - -	314,000 00
4. Drawn and endorsed as the second, - -	25,000 00
5. Drawn and endorsed as the second, - -	97,875 00
6. Drawn and endorsed as the second, - -	25,000 00
Making a total amount of - - - -	$798,301 77

These six notes, bearing date on the 2nd day of November 1818, were discounted for S. Smith & Buchanan on the 12th of that month, and appeared to be renewals, as far as they went, of the preceding classes. No. 3, for $288,000

No. 7, for 247,000

and No. 11, for 370,500

in one or other of which all the other classes had centered.—These three classes amounted to $905,500—but at the same period an accommodation appeared to have been given, through these parties, to Richard M. Johnson of Kentucky, to the amount of $107,198 23. For this sum a note called a stock note was taken from him, drawn also on the 2nd November 1818, at 4 months, and endorsed by S. Smith & Buchanan and George Williams. This note was discounted as a stock note, and the proceeds were carri-

ed to his credit. By a check from him they were transferred to that of S. Smith & Buchanan, and being deducted from $905,500, the amount of Classes 3, 7 and 11, left $798,301 77, for the amount of S. Smith & Buchanan's share of the Stock Loans, as renewed and continued on the 12th of November, upon six notes of the 2d of that month.

The Witness then proceeded to explain in the same manner, James W. M'Culloh's share of this transaction.

CLASS No. 1. It commenced on the 5th September 1817, when his note of that date at 90 days, endorsed by S. Smith & Buchanan for $15,000, was discounted for him as a stock note. It was successively renewed for the same sum, and with the same drawer and endorsers, on the 7th of Dec. 1817, and on the 10th of April and the 14th of August 1818. Each renewal was for four months; after which it assumed a new form. This was the first class in the series of discounts for James W. M'Culloh.

CLASS No. 2. The second commenced on the 7th of October, 1817, when a note of that date for $15,000, at sixty days, drawn by himself and endorsed by S. Smith & Buchanan, was discounted for him as a stock note. It was successively renewed for four months each time, to the same amount, and with the same drawer and endorsers, on the 9th of December, 1817, and on the 11th of April and the 14th of August, 1818: after which it took a new form.

CLASS No. 3. The third class commenced with a note at sixty days, dated on the 23d of October, 1817, and drawn by Nathaniel F. Williams for $25,000, in favour of James W. M'Culloh, by whom it was endorsed. It was discounted for him as a stock note, and successively renewed for the same sum five several times.—First on the 21th of December, 1817, for sixty days; then on the 26th of February, the 29th of June and the 2d of Nov. 1818, for four months each time; and finally on the 2d of March, 1819, for sixty days. Each of these renewals was with the same endorser, except that of November 2d, 1818, which was without any endorser.

CLASS No. 4. The fourth class consisted of a note of December 29th 1817, for $46,000, at four months; which was drawn by James W. M'Culloh and endorsed by S. Smith and Buchanan. It was discounted for M'Culloh as a stock note, and renewed for seven months, with the same drawer and

endorsers, and for the same sum, on the 2d of May, 1818. It afterwards took another shape.

CLASS No. 5. The fifth class consisted of a note for $15,300, drawn on the 6th of January, 1816, at four months, by James W. M'Culloh in favour of S. Smith & Buchanan, by whom and George Williams it was endorsed.

It was discounted as a stock note for James W. M'Culloh, and renewed on the 9th of May, 1818, for the same sum, at six months. This renewed note was also drawn by M'Culloh, in favour of S. Smith & Buchanan, by whom it was endorsed, but not by George Williams. After this renewal the note assumed a new form.

CLASS No. 6. The sixth class was composed of a credit given to James W. M'Culloh, on the 15th of January, 1818, for $56,303 22, as the amount of his note endorsed by S. Smith & Buchanan. This was called a stock note, but no rate of discount or time of payment was stated, nor did it appear to have been ever renewed.

CLASS No. 7. The seventh class commenced in a note of January 30th 1818, for $51,000, at sixty days, drawn by James W. M'Culloh, and endorsed by George Williams and S. Smith & Buchanan. It was discounted for M'Culloh as a stock note, and renewed on the 3d of April, 1818, for the same sum and length of time, and with the same drawer and endorsers.

CLASS No. 8. The eight class consisted of a note for $50,000, drawn on the 7th of March, 1818, at sixty-three days, by James W. M'Culloh, and endorsed by S. Smith & Buchanan and George Williams. It was discounted for James W. M'Culloh, as a stock note; and on the 12th of May, 1818, it was renewed for six months, with the same drawer and endorsers, and for the same sum. It afterwards took a different form.

CLASS No. 9. The ninth class consisted of a note of April 16th 1818, for $113,000, at sixty days. It was drawn by James W. M'Culloh and endorsed by S. Smith & Buchanan, and was discounted for M'Culloh as a stock note. It was not renewed in this form.

CLASS No. 10. The tenth class consisted of a note of James W. M'Culloh, for $25,000, at sixty days. It bore date on the 17th of April, 1818, and was made payable to S. Smith and Buchanan, by whom it was endorsed. This note was also discounted as a stock note, for James W. M'Culloh, but not re-renewed in the same form.

The eleventh class contained a note of April 20th
CLASS 1818, for $11,000, at thirty days. It was drawn by Jas.
No. 11. W. M'Culloh, for whom it was discounted as a stock note, with the endorsement of S. Smith & Buchanan. On the 23rd of May it was renewed for four months, in the same form and for the same sum. It afterwards assumed a different shape.

The twelfth class consisted of a note of $60,000, at
CLASS 30 days, bearing date on the 24th of April 1818, and drawn
No. 12 by James W. M'Culloh, for whom it was discounted as a stock note, with the endorsement of S. Smith and Buchanan. It did not appear to have been renewed in the same form.

The thirteenth class contained a note of $50,000 at 7
CLASS months. It bore date on the 2nd of May 1818, and was
No. 13. drawn by James W. M'Culloh, in favour of S. Smith & Buchanan, by whom and George Williams it was endorsed. It was discounted for James W. M'Culloh as a stock note, but not renewed in the same form.

The fourteenth class was a note of April 17th 1818,
CLASS at 6 months, for $3,499 33. It was drawn by James W.
No. 14. M'Culloh, endorsed by S. Smith & Buchanan, and discounted for M'Culloh as a stock note, on the 4th, of May 1818. On the 20th of October it was renewed at 6 months, for the same sum, and with the same drawer and endorser. After this it assumed a new form.

CLASS The fifteenth class comprised the renewals, on the
No. 15. 26th of May 1818, of the following notes, viz.

Class No.	7,	$51,000
"	9,	113,000
"	10,	25,000
"	12	60,000
Consolidated into one note of		$249,000 at 6 months.

This note is drawn by James W. M'Culloh, and endorsed by S. Smith & Buchanan and George Williams. It was discounted as a stock note for M'Culloh to effect these renewals.

The sixteenth class includes six notes, all dated on
CLASS the 2nd of November 1818, at 4 months, and discounted
No. 16. on the 12th of that month for James W. M'Culloh, as stock notes: viz.

No. 1,	endorsed by S. Smith and Buchanan,	$ 15,000 00
2,	do. by the same persons, - -	112,500 00

3,	do.	by George Williams, -	156,600 00
4,	do.	by the same person, - -	156,723 23
5,	do.	by the same person, -	52,041 66
6,	do.	by the same person, - -	7,136 12

To the total amount of $499,001 01

These notes Mr. White stated, appeared to be renewals of part of those already detailed—viz.

Of Class No. 4, for	$	46,000 00
" 5,		15,300 00
" 6,		56,303 22
" 8,		50,000 00
" 11,		11,000 00
" 13,		50,000 00
" 14,		3,499 33
and " 15, which as has been shewn, includes Nos. 7, 9, 10, 12,		249,000 00

Making a total for these eight Classes of $181,102 55

To which appeared, he said, to have been added a note of S. Smith & Buchanan, for $10,898 46, dated October 2nd 1818, at 12 months, and endorsed by James W. M'Culloh as Cashier. It was first discounted for S. Smith & Buchanan as a stock note; but seemed to have been assumed by M'Culloh as a part of his portion, in the great settlement of November 2, 1818, - - - - - - - 10,898 46

Added to the other notes comprised in the eight classes, it produced a total of - - - $492,001 01

But this total fell $7,000 short of the amount of the notes of Nov. 2nd, 1818, discounted for renewal on the 12th of that month, which was $499,001 01. From whence it seemed to result, that in these renewals interest to the amount of $7,000 was included.

CLASS No. 17.

The seventeenth class consisted of a note for $20,000, bearing date December 26th 1818, and drawn at three months by James W. M'Culloh, for whom it was discounted as a stock note, on the 14th of January 1819, with the endorsement of S. Smith & Buchanan.

Thus it appeared that M'Culloh's part of this operation amounted to the sum of $574,001 01—viz.

Class No. 1,	$ 15,000	00
" 2,	15,000	00
" 3,	25,000	00
" 16,		
including Nos. 4, 5, 6, 8, 11, 13, 14 and 15, which last included No. 7, 9, 10 and 12 - - - - -	481,102	55
Class No. 17,	20,000	00
and the note of $10,898 46 transferred from S. Smith & Buchanan to M'Culloh, in the final adjustment of Nov. 2nd, 1818, - - - - - -	10,898	46
with the interest included in the renewal on that day,	7,000	00
Total,	$574,001	01

The witness, Mr. White, then proceeded to explain in the same manner, from the books and with the assistance of the book-keepers, George Williams's part of this stock operation; which was more simple and much less in amount.

CLASS No. 1. It commenced on the 20th of October 1817, when George Williams's note of that date, for $90,000, at 90 days, was discounted for him as a stock note, without any endorser. It was renewed in the same manner, and to the same amount, on the 23rd of January 1818, for 60 days. On the 27th of March 1818, it was again renewed, in part, to the amount of $70,000, for 60 days, with the endorsement of James W. M'Culloh. And on the 29th of May this last note was further renewed, with an increase of $17,500, by a note of George Williams at 6 months, for $87,500 with the endorsement of Amos A. Williams. This was the first class of George Williams's part.

CLASS No. 2. The second consisted of a note of May 5th, 1818, drawn by George Williams, for $57,333 33, at 10 days, and discounted for him as a stock note, with the endorsement of Amos A. Williams. On the 30th May 1818, it was renewed in the same manner, and to the same amount, for 6 months, with the same drawer and endorser.

CLASS No. 3, The third class comprised a note of Richard Hyatt for $25,000, dated on the 24th of May 1818, at 4 months, and discounted for him as a stock note, with the endorsement of George Williams; by whom it appears afterwards to have been assumed.

CLASS No. 4. The fourth was a note of November 2nd, 1818, at 4 months, for $169,833 34, drawn by George Williams, and discounted for him on the 12th of the same month, with the endorsement of Amos A. Williams, to renew the three preceding classes; which amounted together to that sum, and made up George Williams's part of the stock operation.

The witness then recapitulated the results of the final arrangement, made by the Traversers of this stock operation, on the 2d and 12th of November, 1818, by the division of the whole debt among themselves, and the consolidation of their respective notes. The proportion of

S. Smith & Buchanan, as thus adjusted, was	$798,301 77
That of James W. M'Culloh - - - -	574,001 01
That of George Williams - - - -	169,833 34
Making a total of - - - - -	1,542,136 12

He then stated that soon after his appointment to the office of Cashier, which took place on the 20th of May 1819, he called on the Traverser M'Culloh for the notes constituting this mass of debt, which did not appear in the Bank: whereupon M'Culloh delivered to him a number of notes at 60 days, amounting together to the sum last stated, but all bearing date on the 7th of May 1819, instead of the 2d of November 1818. These notes he produced, and they were given in evidence.

He also presented a list of them, which follows:

List of Notes held by the Office of Discount and Deposit of Baltimore which are comprised in the late arrangement entered into by the Bank of the United States and Messrs. S. Smith & Buchanan, George Williams and J. W. M'Culloh.

Date	*Time.*	*Payers.*	*Endorsers.*	*Amount.*
1819				
May 7.	60 days.	S. Smith & Buchanan,	G. Williams & J. W. M'Culloh,	$112,500 00
"	"	"	"	25,000 00
"	"	Geo. Williams,	S. Smith & B.	156,723 23
"	"	S. Smith & B.	G. Williams,	11,426 77
"	"	"	"	10,000 00
"	"	Geo. Williams,	S. S. & B.	10,000 00
"	"	S. S. & B.	Geo. W.	97,875 00
				$423,525 00

Date.	*Time.*	*Payers.*	*Endorsers.*	*Amount.*
1819.			Amount brought forward.	$423,525 00
May 7.	60 days.	G. W.	A. A. Williams	169,833 34
"	"	"	"	52,041 66
"	"	S. Smith & B. Geo. Williams & G. W. M'Culloh,	favor of J. W. M'C.	325,000 00
"	"	G. Williams,	S. S. & B. & J. W. M'C	155,600 00
"	"	S. S. & B.	G. W.	25,000 00
"	"	G. W.	S. S. & B.	12,500 00
"	"	S. S. & B.	G. W.	12,500 00
"	"	"	"	15,000 00
"	"	G. W.	S. S. & B.	15,000 00
"	"	S. S. & B.	G. W.	15,000 00
"	"	S. S. & B., G. W. and J. W. M'C.	J. W. M'C. Cashier,	314,000 00
"	"	S. S. & B,	G. W. J. W. M'C. part of $7,136 12	5,000 00
				1,540,000 00
		Fractional part carried to general account,		2,136 12
			*	$1,542,136 12

It would be remarked, Mr. White said, that the last note in this list was carried out as a note of $5,000, when in fact it was for $7,136 12. This he said was done at the request of James W. M'Culloh, who stated that it was necessary, in order to reduce the total amount to $1,540,000, and make it agree with the statement of the debt, which he and the other Traversers had presented to the parent board. He at the same time requested the witness, to charge this fraction of $2,136 12 equally to the parties, in their seperate accounts; which was done. Thus their joint debt, arising out of the stock note transaction, was reduced to $1,540,000.

* The notes of Nov. 2nd, 1818 being at 4 months, fell due on the 2nd and 5th March 1819. Those contained in this list, which vary from the former in some of the particular sums, and in the whole number of the notes, but agree precisely in the total amount, present the appearance of renewals made on the 7th of May 1819. They must however have been made after the 20th of May, and anti-dated; for Mr. White proved, that when he took possession of the office, on that day, no such notes were there. There was no evidence or appearance of any renewal on the 5th of March; but if they had been then renewed, at 60 days, the renewed notes would have fallen due on the 7th of May.

Mr. White then observed, in answer to a question by the Attorney General, that at the time of delivering these notes, each of the parties was largely indebted to the bank, on a distinct and separate account. These accounts he proceeded to state in the following manner:

I. S. Smith & Buchanan's separate Debt,

1	note endorsed by George Williams - -	$35,000 00
2	" Hollins & M'Blair, - -	34,757 56
3	" Calhoun & Matthews, -	42,000 00
4	" Lemuel Taylor, - -	15,000 00
6	overdrawings, - - - - - -	39,916 92
7	proportion of interest on stock notes* -	10,859 62
8	proportion of balance remaining due on a speculation in foreign bills,** - - -	2,120 50
	Making a total of	$179,654 60

II. James W. M'Culloh's separate debt.

1	Overdrawings, - - - - - -	$14,011 47
2	proportion of interest on stock notes,* - -	10,859 62
3	two notes of S. Smith & Buchanan's, discounted for him, - - - - - - -	20,500 00
4	proportion of balance on the speculation in Foreign bills,** - - - - - - - -	3,285 10
	Making a total of	$48,656 19

III. George William's separate debt.

1	notes endorsed by Amos A. Williams, -	$89,000 00
2	" S. Smith & Buchanan, -	68,889 13
3	" J. W. M'Culloh, - -	31,500 00
4	overdrawings, - - - - - -	13,539 12
5	proportion of interest on stock notes,* -	10,859 62
	Making a total of	$213,787 87

*This was their proportion of the interest on the whole mass of stock notes of November 2d 1818, from the 5th of March, 1819, when they fell due, till the 10th July 1819, when those substituted for them, and bearing date on the 7th of May, 1819, became payable.

**This operation is fully explained, in the evidence under the third indictment; where it was relied on to support the general count.

He then recapitulated these separate debts as follows:

S. Smith & Buchanan, - -	$179,654	60
James W. M'Culloh, - -	48,636	19
George Williams, - - -	213,787	87
Total,	$442,098	66
To which he added the stock note or joint debt, - - - - - -	1,540,000	00
Making a grand total of	$1,982,098	66†

This concluded the evidence as to the origin progress and extent of the transaction, that formed the ground of this indictment.‡

The Attorney General then observed, that having thus shewn the sums obtained from the bank by these persons, he would next proceed to shew how they were obtained. It would appear, he said, that in obtaining them the Traversers proceeded in direct violation of their duty, and of the orders of the Parent Board; and without the consent or knowledge of the Branch Board, whom they al-

† It is to be remarked that these parties were chargeable, each for one third, with the sum of $2136 12, deducted as explained above, from the total amount of the stock notes; which was to be carried to their separate accounts, in equal parts, but was omitted by Mr. White in his statement of their separate debts; probably because his attention was not called to it at the time, by any particular question. It also appeared in the course of the trials, that S. Smith & Buchanan were separately chargeable with $27,953 6?, being the amount of sterling bills of exchange for £6080, which were remitted by a bank in Georgetown, to pay a balance due to the Baltimore branch, and appropriated by James A. Buchanan to the use of the association; and that S. Smith & Buchanan and James W. M'Culloh were chargeable in different proportions, with the further sum of $25,535, taken from the bank under colour of a bill of exchange on Daniel C. Holliday. But these two transactions make the subject of the second and third indictments, and therefore were not taken into these accounts by Mr. White. With the fraction of $2136 12 deducted from the stock notes, as explained above, they make an aggregate of $55,624 74; which added to the joint debt on stock notes, as finally adjusted, and to the aggregate of separate debts, produces a mass of $2,037, 723 40, obtained by these persons from the bank, in various ways.

‡Mr. White afterwards prepared at the request of one of the counsel for the state, succinct statements of these stock notes, and their ultimate renewals, which give in a small compass a very clear view of the whole operation. They are inserted here, for the better and more easy understanding of the subject.

leged they were not bound to consult, and whom they deceived and kept in ignorance of the nature of their proceedings, by misrepresentations and false pretences.

He would first recal to the recollection of the court, the resolutions of the Parent Board which had been given in evidence; and especially those of July 25th, 1817, and August 26th in the same year, which prescribed the terms on which loans on pledges of stock might be made by the Offices of Discount and Deposit, and clearly confined the authority to the several Boards of Directors.

He would then prove, in the first place, that all these notes, constituting this great mass of debt, were discounted as "Stock Notes," or notes secured by pledges of the stock of the bank; and were constantly so represented to the Directors, by the Traversers Buchanan & M'Culloh.

S. Smith & Buchanan's proportion of the notes constituting the Stock arrangement appear to have originated thus-- and to have been finally renewed thus:

August 5, 1817,		30,000	
Sept. 5, 1817,	165,000		
" 4, 1817,	47,000		
became March 9, 1818,		217,000	
Became May 11 1818,			247,000
June 13 1817,		39,500	
Nov. 21 1817,		48,000	
April 17 1818,		21,000	
August 22, 1817, 215,000 became		250 000	
And these four notes became			370,500
August 30 1817, 280,000 became			288,000
	In all		905,500
Deduct note of R. M. Johnson, endorsed S. Smith & Buchanan and Geo. Williams,			107,198 23
			798,301 77

Which amount was finally renewed by notes dated Nov. 2, 1818,		11,426 77
"	"	325,000 00
"	"	314,000 00
"	"	25,000 00
"	"	97,875 00
"	"	25,000 00
		$798,301 77

The first witness examined for this purpose was Andrew B. Bankson, a discount clerk of the Branch Bank; who proved, that in the regular and usual course of discounts, all notes offered for discount are entered, as they are presented, in a book called "the Offering Book," which is laid before the board of directors, together

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J. W. M'Culloh's proportion of the notes constituting the Stock arrangement appear to have originated thus—and to have been finally renewed,

Sept. 5. 1817	$15,000		thus, $15,000 00
Oct. 7, 1817	15,000		15,000 00
23, 1817	25,000		25,000 00
Jan'y 30, 1817,	51,000		
April 24, 1818,	60,000		
" 16, 1818,	113,000		
" 17, 1818,	25,000		
These four notes were renewed			
May 6 1818		$249,000	
Dec. 29 1817		46,000	
January 6 1818		15,300	
" 15 1818		56,303 22	
March 7 1818		50,000	
April 20 1818		11,000	
May 2 1818		50,000	
April 17 1818		3,499 33	
These eight notes amount to		481,102 55	
to which add a note dated 2nd Oct. 1818, placed previously to the credit of S. Smith & Buchanan,		10,898 46	
	In all	$492,001 01	
which nine notes were renewed as follows encreasing the amount $7,000	November 2, 1818,		155,600 00
	"		156,736 23
	"		15,000 00
	"		52,041 66
	"		112,500 00
	"		7,136 12
January 14, 1819,			20,000 00
	In all		$574,001 01
	* Deduct fractional part of this note,		2,136 12
			$571,864 89

with the notes, on every discount day, and consequently furnishes them with a list of all the notes offered for discount on each day, in the regular course: That up to the 12th of Aug. 1817 all notes offered for discount, whether on stock or personal security, were entered indiscriminately in this "Offering Book," making one list for each discount day: That on the 12th of August 1817, the practice began of making two lists or lines in the Offering Book; one for stock notes, and one for notes on personal security; which practice continued till the 26th of December 1817, when a separate Offering Book was introduced for notes on personel security, containing them and none other: That the old or former Offering Book *continued to be used, as an "extra discount book," in which were* entered all the notes offered for discount and discounted on stock: and that the regular Offering Book was always laid before the directors on every discount day, up to the 26th of December 1817, when a separate Offering Book, for notes on personal security, was introduced; after which time the "extra Discount Book," containing the stock notes, was never laid before the board.

The witness further proved, that all notes discounted are returned to the discount clerk, who *endorses and files them; after* which they are posted in the Discount Ledger which is called the "Credit Book," and the net proceeds are carried to the credit of those persons who have obtained the discounts: And that in this "Credit Book" they are described as "Stock Notes," or notes on personal security, as the case may be; with a statement of the dates, the periods of payment, and the names of the drawers and endorsers.

These books were then produced proved and examined. They exhibited all the notes in question, as well as that of August 12th 1817, for $540,000 and its renewals, as "Stock Notes," made discounted and from time to time renewed, as such.

The Attorney General proceeded to state, that he would next prove, that no stock whatever had been in fact pledged for these

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George Williams's proportion of the notes constituting the Stock arrangement appear to have originated thus—and to have been finally renewed thus:

October 20, 1817,	90,000 00
May 5, 1818,	57,333 33
and a note of R. Hyatt,	25,000 00
And these three notes were finally renewed Nov. 2, 1818,	$169,833 34

notes, thus discounted as stock notes. For this purpose he again called Mr. White the Cashier. Mr. White proved that soon after he took possession of the office as Cashier, in May 1819, the papers and effects of the bank which had been in the custody of his predecessor James W. M'Culloh, were handed over to him by a committee of the directors, consisting of David Warfield, Isaac Edmondson and James Beatty: (the two first of whom died before the trial) That among the effects thus delivered to him there was no stock pledged to the bank, in any manner, by all or either of the Traversers, for any of these notes: That the only pledge of stock, by any of the Traversers, that ever was delivered to him, consisted of thirty four shares only, in the name of James W. M'Culloh, which had been pledged by him for a loan of $3,400, for his separate account, on his own note without an endorser, and made no part of the great stock transaction in question: That the statement of the effects handed over to him, by which the transfer was made, shewed no stock hypothecated by any of the Traversers to secure loans on stock, except these 34 shares: That while the committee were engaged in this transfer, which occupied them from the 20th of May till about the 7th of June 1819, a list was made out of all the stock notes found among the effects of the bank, with an account annexed to each note of the stock pledged for it, which list he produced: And that when the whole mass of notes, making up the aggregate sum of $1,512,136 12 was delivered to him by James W. M'Culloh, as stated in the former part of his testimony, some of them, to the amount of $645,400, were designated by M'Culloh as stock notes, for which reason they were placed as stock notes on this list; but there being no stock found in the bank to represent them, a memorandum of that fact was annexed to them in the list, by one of the members of the committee. Of the notes thus marked he gave the following specification.

One of	$ 52,041	66
"	169,833	34
"	97,875	00
"	10,000	00
"	10,000	00
"	11,426	77
"	156,723	23
"	25,000	00
And "	112,500	00
Making a total of	$645,400	00

James Beatty was next examined. He proved that he was a director of the Baltimore branch, at the time when the effects of the bank were delivered over by a committee of the Board, to John White the new cashier. That this committee was composed of David Warfield and Isaac Edmondson, both deceased, and himself; and that no stock pledged for any of the notes making part of the mass of $1,542,136 12, was found in the bank, to the best of his knowledge and belief. The list of stock notes mentioned by Mr. White was then produced to him; and he proved that the memorandum "no stock in this office for these notes," which appeared on the face of it, annexed to the notes enumerated from it by Mr. White, was made by David Warfield, one of the deceased members of the committee, during the delivery, which occupied several days.

The Attorney General then proceeded to offer evidence, that all the notes thus discounted for the Traversers as stock notes, to the amount of $1,542,136 12, without any pledge of stock whatever, were discounted by James A. Buchanan and James W. M'Culloh themselves, as President and Cashier, without the sanction or knowledge of the Branch Board; and that some of the directors, when they shewed a disposition to enquire into the affair, were given to understand by these persons, that the discounting of stock notes was executive business, confided solely to them, with which the board had nothing to do.

For this purpose he again called Andrew B. Bankson, who was discount clerk at the time when these notes were discounted and renewed. He swore that notes offered for discount as stock notes, during that period, were not laid before the board.

John White the Cashier, was next examined on this point. He proved that he was a director of the Baltimore Branch in 1818 and 1819; and that no notes offered for renewal, on pledges of stock, or purporting to be so, were submitted to the board while he was a member of it, until, as he thought, about the month of January 1819, when the order came from the parent board, expressly requiring it to be done: That none of the notes in question, to the best of his recollection and belief, were so submitted even then: That he always understood before that order was received, that the discounting of such notes, for renewal or otherwise, was executive business, and as such committed by the Parent Board to the President and Cashier of the branch: That notes offered for discount, on stock security, appeared by a reference to the books, to have been

entered indiscriminately in the offering book, with notes on personal security, until the 12th of Aug. 1817; after which they were still entered in the same book, but in a separate line or list, until the 27th of December in that year; when a separate offering book for notes on personal security appears to have been introduced, and the old offering book became an extra discount book, for notes discounted by the President and Cashier as stock notes, as well as for those which they discounted on personal security: That these last appear to have been to a large amount: That the statement book was laid on the table of the Directors on every discount day: That the notes entered in it, as having been discounted on pledges of stock, were in a seperate line from those on personal security: That he generally had the credit book before him; but neither that book nor any other shewn to the Directorsj as far as he knows, made any mention or took any notice of the number of shares pledged for the respective loans on stock, or any of them; so as to inform the Directors of the rate, whether at par or above it, at which the loans were made.

James Beatty was again called and examined as to this point. He swore that he became a Director of the Baltimore Branch on or about the 1st day of December, 1817, and continued so until on or about the 27th of November, 1820: That during this period of three years, he attended the meetings of the board very regularly and constantly; not having been absent to the best of his recollection and belief, from more than three meetings: That while he was a member of the board he knew nothing of what was done in stock loans, previous to the order of January 1819, forbidding them expressly to be made without the consent of the Directors: That on one occasion, shortly after his appointment, while the board was in session, he was directed to look into an individual's account in the ledger, and remarked to the board that the amount of notes discounted was very high, stating the sum; upon which he was told by Lemuel Taylor, that he was mistaken in the amount. He replied that if there was truth in figures he was right, for that he had added it up. The same person then came round, and looking at the addition told him that he was wrong, for that he had included the stock notes, with which the board had nothing to do: That James A. Buchanan and James W. M'Culloh were then present, and made no objection to this statement: That up to the order of January 22d, 1819, he recollects no instance of a stock note, or one purporting to be such, being submitted for discount or renewal to

the Branch Board; but always understood that such discounts and renewals had been committed by the parent board, as executive business, to the President and Cashier of the Branch: and that he had no recollection of any of the notes in question having been submitted to the board, either before that time or after.

R. L. Colt was next examined. He proved that he became a director of the Baltimore Board, at its first organization in November, 1816: That he attended the meetings of the Board very regularly, except at times when he was occasionally absent from Baltimore, and paid particular attention to the business: That after some time early in August, 1817, he thinks the 10th or 11th, no stock notes to the best of his recollection and belief, were ever submitted to the Board, for discount or renewal; until some time in January, 1819, when an order of the Parent Board was received, forbidding them to be made without the consent of the Directors: And that on making enquiry at the Board, on the subject of such loans, he was told by both James A. Buchanan and Jas. W. M'Culloh, the President and Cashier, that it was executive business, with which he, as a Director, had no concern: On one occasion he was told, that he might, with as much propriety, go down stairs and enquire into the affairs of the Union Bank.* He did not recollect whether this observation was made by the President or Cashier; but had an impression that it was by the Cashier. He also stated that such enquiries were several times repeated, and the same answer always given; that it was executive business, with which the Directors had nothing to do; which he took occasion once, and perhaps oftener, in Philadelphia, to communicate to some of the members of the Parent Board. He added in answer to a question by the Attorney General, that he felt very confident that none of the notes now in question, were ever submitted to the Board, either for original discount or renewal.

The next witness examined on this point was George Hoffman; who proved that he was a Director of the Branch Bank in Baltimore, from sometime in December, 1816, to the latter part of November, 1818; and that from early in August, 1817, the Board of Directors, to the best of his knowledge and belief, was never consulted about stock loans, which never came before them; That the right of loaning on stock was uniformly claimed and exercised by the President and Cashier, as executive business: That he never

* The Branch Bank was carried on in an upper story of the building occupied by the Union Bank.

knew or heard of the Branch Board having given them such a power, but always supposed that they derived it from the Parent Board; and that he never understood or supposed that any loan was granted by them on stock, above par, until after he became a Director of the Parent Bank, in the beginning of January, 1819.

John Hoffman was next examined on the same subject. He proved that he was appointed a Director in the Baltimore Branch in December, 1818: and that he soon after made enquiry at the Board about stock loans, and was told that it was executive business, and as such was transacted by the *President and Cashier*, without the intervention of the Directors.

The next witness to this point was John M'Kim, Jr. who proved that he was appointed a Director of the Baltimore Branch at its first organization, in 1816, and continued so till sometime in the spring of 1819: That after some time in August, 1817, no stock notes ever came before the board for discount or renewal, till the resolution of the Parent Board in January, 1819: That during this period he knew nothing of stock loans; the granting and management of which the President and Cashier claimed to themselves entirely as executive business: That he was a very constant and regular attendant at the board, while he was a member, and never heard of its having given this power to the President and Cashier; whom he always understood to claim and exercise it, under direct authority from the Parent Bank. That he never knew till the order for a reduction on stock discounts was received from the Parent Board; that they had discounted on stock at 125 per cent, or 25 per cent above par; and then he complained of it to the President, Mr. Buchanan, and others: And that he knew nothing of their excessive loans to themselves and their associate George Williams, till after the 8th of March, 1819, when he was a member of the Parent Board.

Joseph W. Patterson was then examined on the same subject. He proved that he was a Director of the Baltimore Branch, from about the 1st of December, 1816, to about the 1st of December, 1817:* That while a Director he learned that loans on stock were granted by the bank, which never came before the board—and upon hearing an enquiry made on the subject, by a Director at the board, the Cashier made answer that it was executive business, and that

* The records of the Bank shew that it was from November 27, 1816, to November 27, 1817, inclusive.

the board had nothing to do with it; it having been given to the executive officers by the Mother Board: That this was the answer of the Cashier: That he knew of no such authority to discount on stock, being given to the executive officers, excepting from the assertion of the Cashier.

The next witness on this subject was William Gilmor. He proved that he was appointed a Director of the Branch in Baltimore, in the spring or summer of 1817, on the resignation of his brother Robert Gilmor, who about that time went to Europe: And that he continued till sometime in the autumn of 1818, when he resigned: That during this period he observed that large loans were made by the President and Cashier on stock; with which he always understood the board had nothing to do: That he understood this expressly from the President and Cashier, or learned it by enquiries at the board, when they were present: That no such loans, either by way of original discount or renewal, nor any loans on bills of exchange, came before the board while he was a member; both being claimed by the President and Cashier as executive business: And that the existence of this state of things, which greatly curtailed the powers and diminished the usefulness of the Board of Directors, was one of his chief reasons for resigning his seat.*

Andrew B. Bankson, the discount clerk was again called and examined, as to the authority by which notes discounted, and their designation as notes on stock or personal security, are entered in the books of the bank. He proved that all such entries and designations are made by the particular orders of the Cashier, and under his superintendance.

The Attorney General then produced proved and read in evidence several letters from the Traversers, Buchanan and M'Culloh, respectively, in their official capacities, to the President and Cashier of the Parent Bank, bearing date on the 24th and 31st of May, the 4th, 11th, 12th and 21st of June and the 23d of July, 1817. He also produced and proved the original letter book of the Parent Bank, from which he read copies of two letters from Willm. Jones the President to the Traverser Buchanan, bearing date on the 27th of May and 13th of June, 1817; and two from Jonathan Smith, the Cashier to the Traverser M'Culloh, dated on the 24th of June and

* The five last witnesses having been absent when the others were called, were not examined immediately after them, but in a subsequent stage of the case. Their testimony on this point is reported here, for the purpose of giving a connected view of the whole.

30th of July, in the same year. Notice had been given to the Traversers to produce the originals of these four letters, which it was proved were not found in the Branch Bank, when the present Cashier took possession of the office, on the removal of Jas. W. M'Culloh.

The object of giving all these letters in evidence, as stated by the Attorney General, was to shew that the Traversers Buchanan and M'Culloh, at the time when they were discounting notes for themselves and their associate, to an immense amount, under pretence of a pledge of stock which did not exist, well understood the nature and extent of their duties, in relation to loans on stock, which had been fully explained to them not only by the resolutions of the Parent Board, but by the letters of its officers.

The letters were as follows.

"*Office of Discount and Deposit, Baltimore 24th May* 1817.

"SIR,

"Application is made to our board by Mr. George Williams, for a discount on 3,700 shares of stock in the bank of the United States; and as express authority to grant discounts of this kind has not been given to us, I deem it proper to inquire, what are the views of the bank of the United States, and to ask instructions for our government.

The principal effect in giving the above discount, would be to transfer a debt which the applicant owes at the Union Bank to this office. The former owes the latter, and we will, consequently, with equal security be drawing interest, which it is probable our banks will attempt to resist after the 1st July, although they certainly will not be in a situation to liquidate their balances, by the payment of them in specie.

I have the honour to be,
With great respect, sir,
Your obedient servant,
J. A. BUCHANAN, Pres

WILLIAM JONES, Esquire."

"*Office of Discount and Deposit, Baltimore May* 31, 1817.

"SIR,

Previously to the receipt of your letter dated the 27th inst. the application of Mr. Williams for a discount on stock had been acted upon by the board, and its amount applied to the credit of the Union Bank. In future, all applications of magnitude of this

description, will be transmitted to the Bank of the United States, and every facility will be afforded in forwarding such by the officers of this institution.

I have the honour to be,
With the greatest respect, sir,
Your obedient servant,
J. A. BUCHANAN, President.

WILLIAM JONES, Esq.
President of the Bank of the United States."

"*Office of Discount and Deposit, Baltimore, 4th June*, 1817.

"SIR,

"Application is made to this Office by Samuel M'Culloh, for a discount of $36,050, being the par value of 570 shares stock in the Bank of the United States, which will be transferred as usual, and the proceeds of which discount to be remitted in a check on this office. I transmit the application to be submitted to your board, and have the honour to be,

With great respect, sir,
Your obedient servant,
J. A. BUCHANAN, Pres't.

WILLIAM JONES, Esq.
President of the Bank of the United States."

Office of Discount and Deposit, Baltimore, 11th June, 1817.

"WILLIAM JONES, Esq.

SIR,

"I am requested by Amos A. Williams, to make application to your board, in his behalf, for a discount of sixty-five thousand dollars on an hypothecation, in the prescribed form, of one thousand shares United States Bank Stock. Be pleased to submit this proposition and to communicate the result.

I have the honour to be,
With great respect, sir,
Your obedient servant,
J. A. BUCHANAN, President."

"*Office of Discount and Deposit, Baltimore, June* 12, 1817.

"SIR,

"On the 4th inst. I communicated the application of Samuel M'Culloh to your board through this institution, for a discount of

$37,050, being the par value of five hundred and seventy shares United States Bank Stock, to be hypothecated in the prescribed form. As I have not been favoured with your reply, I am apprehensive that my letter miscarried, and therefore, at the request of the applicant, I take the liberty of renewing it.

By yesterday's mail I transmitted the request of Amos A. Williams, for a similar discount on one thousand shares.

I have the honour to be,
With great respect, sir,
Your obedient servant,
J. A. BUCHANAN, President.

WILLIAM JONES, Esq.
President of the Bank of the United States."

"*Office of Discount and Deposit, Baltimore, 21st June*, 1817.

"DEAR SIR,

"Ralph Higinbothom, Esq. wishes a discount on 875 shares of your stock, full paid; please ask it for him next Tuesday, and advise me the result.

The delay attending your answer to Samuel M'Culloh's application for a discount on 570 shares, made other arrangements necessary, and I am requested to say, that he does not wish it *now*.

Truly yours,
JAS. W. M'CULLOH, Cashier.

JONA. SMITH, Esq.
Cashier Bank of the United States, Philadelphia."

"*Office Discount and Deposit, Baltimore, 23rd July*, 1817.

"DEAR SIR,

"Mr. James White, of Abingdon, Virginia, proprietor of 1,000 shares of United States Bank Stock, wishes a discount of $30,000 dollars towards paying his third instalment on said shares, and for that purpose to pledge 300 shares of his stock to the bank; please apply for it and inform me of the result.

Truly yours,
JAMES W. M'CULLOH, Cashier.

JONATHAN SMITH, Esq.
Cashier, Bank of the United States, Philadelphia."

"*Bank of the United States, May 27th*, 1817.

SIR,

Your letter of the 24th was this day submitted to the Board of Directors, and it was agreed to grant the discount at *this Bank*, for which Mr. Geo. Williams had applied at the office in which you preside, and upon the following conditions, to wit; upon 3,700 shares of stock of the Bank of the United States, to be transmitted to the Cashier, together with a power of attorney duly executed agreeably to the form herewith enclosed, and Mr. Williams's note of hand for the par value of the amount paid on the said shares, payable to the Cashier of the Bank of the United States, or his order, without defalcation sixty days after date, at the Bank of the United States.

These terms being complied with, a check on your office will be transmitted to Mr. Williams for the amount of the proceeds of his note, which it is understood will be applied to the reduction of the balance due the Bank of the United States, by the Union Bank of your city, in the manner suggested in your letter of the 24th.

Upon investigation it appeared to the board, that a general authority to all the offices, to grant those extensive discounts upon stock, would probably produce consequences not contemplated by the board, and that a partial authority might be considered invidious.

It was therefore determined to confine all discounts upon stock of considerable magnitude, to the Board of the Parent Bank, to which application can be made with facility through the offices, in the nature of that which you have submitted.

I have the honour, &c.

(Signed) W. JONES, Prest.

JAS. A. BUCHANAN, Esq.

President Office Bank United States, Baltimore."

"*Bank United States, July 25th*, 1817.

"DEAR SIR,

"Your letter of 23rd, containing an application on behalf of Mr. James White for a discount of $30,000 on a pledge of stock, is received and the discount granted by the Board of Directors.

Your favor of the 3rd, enclosing your note for $250,000 to renew one of the same amount was received. Agreeably to your request I return you your note due the 8th inst.

You will oblige me by forwarding me the certificates, and an account of all the 6 per cent stock purchased by you at my request, as soon as you can.

In a few days I will forward you a resolution of the Directors of this bank, authorizing the Offices to discount on pledges of stock with the form of a power to be used.

I am with much esteem,

Your obedient servant,

(Signed) JONA. SMITH, Cashier.

J. W. M'CULLOH, Esq.

Cashier, &c. &c. Baltimore."

"*Bank of the United States, June 13th*, 1817.

"SIR,

"The discount applied for by Mr. Samuel M'Culloh was granted, and your letter passed to the Cashier, to give notice to your Cashier, was by accident overlooked, and has thus given you the unnecessary trouble of writing a second letter. The discount applied for by Mr. Amos A. Williams was this day granted.

I have the honor, &c.

(Signed) W. JONES, Pres't.

J. A. BUCHANAN, Esq.

President of Bank United States, Baltimore."

"Extract from Jona. Smith, Cashier, to J. W. M'Culloh, Cashier.

Bank of the United States, June 24th, 1817.

The application on behalf of Ralph Higinbotham Esq. for a discount on 875 shares complete at par, has this day been granted.—The necessary papers you will please to direct him to forward to this Bank."*

The Attorney General then proceeded to offer evidence, of the means employed by the Traversers, Buchanan and M'Culloh, to conceal from the Parent Board the extent of the loans which they had thus made to themselves, on pretence of pledges of stock. He first called the attention of the court, to the resolution passed by the Parent Board, on the 20th of October 1818, and already gi-

* These letters were given in evidence in a subsequent stage of the trial, for the purpose here stated. They are introduced in this place, on account of their connexion with this part of the subject

ven in evidence; which requires statements from all the Branches, "of the existing discounts upon notes, for the payment of which public or corporate stocks of any kind may have been pledged; together with a list of the said notes, the names of the drawers and endorsers, and the amount and description of the stock pledged, for the payment of the said notes respectively."—He also produced and read, from the Letter Book of the Parent Bank, the copy of a letter of February 5th, 1818, from Jonathan Smith the Cashier, to James W. M'Culloh as Cashier of the Baltimore Branch, enforcing the necessity of curtailments on discounts; with the answer of James W. M'Culloh, dated on the 7th of the same month. These letters he said were relied on, to prove the concealment and deception practised on the Parent Board, in relation to the operation in question. They are as follows:*

"Bank United States, 5th February, 1818.

SIR,

The Directors of this Bank have looked at the present state of the specie concerns of the Country with great solicitude, and in consequence of the early and unprecedented demands for Spanish dollars for exportation, they directed the President to intimate to several of the offices the necessity of very considerable curtailment in their discounts; in compliance with the directions of the Board he has written to the offices east of this, and as far south as Richmond on the subject; the effects of the curtailments made in consequence thereof have had a beneficial effect in all the cases where the directions were attended to. Notwithstanding the wish of the Board expressed in a letter to your president, and the assurances given by the Directors of this Bank residing in Baltimore that a reduction of the discounts at the office there would immediately take place, yet I find by the last statement they had actually increased instead of having been diminished; the circumstance has excited not only surprise but considerable uneasiness in the minds of the officers of the Bank. Although not particularly directed to make this communication, yet I feel it my duty to say that in my opinion the honor and safety of the Bank require that the discounts at Baltimore should without delay be greatly reduced. I would also advise that where it can be possibly avoided no

* These letters also were given in evidence in a subsequent stage of the trial; and are introduced here for the same reasons as the former.

drafts east of this place should be given by you—We have been within a few days, under the necessity of forwarding another supply of specie to Boston, and from present appearances we will have to send again in less than one week; in that case we must again apply to the south, for which I would advise you to prepare without delay.

I have received your favor on the subject of the stock to be sent to Europe, in that business I am apprehensive some difficulties will arise—on this subject the President however will write you.

I am with much esteem,
Dear sir,
Your obedient servant,
JONA. SMITH, Cashier.

JAS. W. M'CULLOH, Esq. Cashier of the Office Baltimore."

"*Office of Discount and Deposit Baltimore, 7th Feb. 1818.*

"DEAR SIR,

"I have received your kind letter of the 5th, and in reply I beg leave to assure you, and through you, if necessary, the Directors of your Bank, that this Office will fully meet their wishes in diminution of its business and Stock Discounts, say one million on each line, if it is thought requisite to go so far. And that it is so considered by you, I shall assure them, until you wish a different course pursued.

I apprehend that the whole curtailment may be accomplished within 60 days, and the largest part within 30.

Truly yours,
J. W. M'CULLOH.

JONATHAN SMITH, Esq.
Cashier, Bank of the United States, Philadelphia."

He then produced proved and offered in evidence, four original letters from Jas. W. M'Culloh as Cashier of the Baltimore Branch, to Jonathan Smith as Cashier of the Parent Bank, which bore date on the 26th of October, and 9th and 14th of November, 1818; two of them being on the same day.

Gen. Winder, of counsel with the Traversers, stated that he would not object to the reading of these letters in the first instance, but would reserve the right to object to their competency afterwards, should it appear proper. With this reservation they were read, as follows:

"*Office Discount and Deposit, Baltimore, 26th Oct.* 1818.

"DEAR SIR,

"I have directed the list of discounts granted here upon the pledge of stock and personal security, to be made up, and as soon as it can be conveniently furnished, it shall be forwarded to you.

The information it requires to be given to the parties interested, shall also be communicated, and I flatter myself, that they will comply with the requisition without much inconvenience.

With great respect,

Yours truly,

J. W. M'CULLOH, Cashier.

JONA. SMITH, Esq.
Cashier Bank United States, Philadelphia."

"*Office Discount and Deposit, Baltimore, 9th Nov.* 1818.

DEAR SIR,

"I am preparing a list of borrowers upon stock at this office, which you will receive next Tuesday; the delay in furnishing this list correctly, arises from a necessity to examine these loans for some time back, as entries have sometimes been debited to loans on stock, which should have been to bills on personal security, and vice versa. I regret the delay, but shall hasten to lay the statement as soon as possible correctly before you.

Truly yours,

J. W. M'CULLOH, Cashier.

JONA. SMITH, Esq.
Cashier Bank of the United States, Philadelphia."

"*Office Discount and Deposit, Baltimore, 14th Nov.* 1818.

"DEAR SIR,

"I now enclose a statement of the existing loans, made at this office upon a pledge of stock with personal security.

And to the parties intrusted I give notice, that a reduction of 25 per cent will be required, every 60 days upon any excess had above the par value of their stock, unless they severally deposit an equal amount in *funded debt, or stock of this bank at par.*

I have the satisfaction to believe, that whatever has been lent at this office, is perfectly well secured, and that the reduction in in the amount of its total loans recently required, will be accomplished without any loss to the institution, and most probably within 60 days.

Correcting the distribution of the loans, the amount lent upon pledged bank stock, &c. differs from the last weekly statements, being smaller; which encreased the amount of bills discounted upon personal security, without varying the aggregate amount, as you will see by the next weekly statement; excepting only what has been curtailed.

This circumstance you can explain to the satisfaction of your Board of Directors.

I have the honour to remain,
Your obedient humble servant,
J. W. M'CULLOH, Cashier."

"*Office Discount and Deposit, Baltimore, 14th Nov.* 1818.

"DEAR SIR,

"I send you herein a statement of the existing loans made at this office, upon pledged stock and personal security.

As the amount differs from the last statement of this bank, it is proper for me to remark, that items had been posted under one title, that should have been to the other; these variations adjusted, the next statement will accord; unless some small loan is taken up or paid off.

Truly yours,
J. W. M'CULLOH, Cashier.

JONA. SMITH, Esq.
Cashier Bank of the United States, Philadelphia."

He then produced the letter book of the Baltimore Branch, for the period in question, and proved it by William L. Gill the corresponding clerk. On inspection it was found to contain no copy, memorandum or trace of any letter whatever, between the 6th of August, 1818, and January 25th 1819.

Mr. Gill, in answer to a question relative to the nature of the letters of which it was usual to retain copies, stated that copies were never kept of such, as merely gave advice of the payment of drafts sent to the bank for collection, or enclosed drafts for collection to other branches. A register of such drafts was kept in a separate book, and their payment, when made and reported, was noted in the margin. The Attorney General then produced and offered in evidence the following paper, purporting to be a list of "Loans upon Stock and personal security, made and existing at the Office of Discount and Deposit of the Bank of the United States at Baltimore; November ——, 1818."

Loans upon Stock and Personal Security, made and existing at the Office of Discount and Deposit of the Bank of the United States at Baltimore, November 1818.

Beatty, James, 150 shares U. S. B. S. - -	$15,000 00
Bradford & Cooch, 40 shares U. S. B. S. -	4,000 00
Burt, Andrew, endorsed by Fridge & Morris, 80 shares U. S. B. S. - - - - - -	10,000 00
Buchanan, Jas. C. endorsed by James Calhoun, 300 shares U. S. B. S. - - - - - -	37,500 00
Crawford, Wm. 15 shares U. S. B. S. - - -	1,500 00
Chatard, J. 30 shares U. S. B. S. - - -	3,000 00
Coates, J. 10 shares U. S. B. S. - - - -	450 00
Calhoun, J. 200 shares U. S. B. S. - -	20,000 00
Candolle, A. 24 shares U. S. B. S. - - -	1,900 00
Calhoun & Matthews, endorsed by S. Smith & Buchanan, 860 shares U. S. B. S. - - -	107,500 00
Donnell, John, 600 shares U. S. B. S. - - -	42,500 00
Deshon, C. endorsed by A. J. Schwartz, 600 shares U. S. B. S. - - - - - - -	74,000 00
Dunbar, G. T. endorsed by J. & J. Sullivan, 500 shares U. S. B. S. - - - - - - -	57,500 00
Davidge, J. B. other stock at par value 5,000 State Bank, - - - - - - - - -	5,000 00
Dugan, C. 300 shares of U. S. B. S. - - -	30,000 00
Falconar, A. H. endorsed by P. A. Young, 195 shares U. S. B. S. - - - - - - -	24,375 00
Finley, Thos. 150 shares U. S. B. S. - -	15,000 00
Girard, Mad. 9 shares U. S. B. S. - - -	700 00
Gray, James, 30 shares U. S. B. S. - - -	2,000 00
Gardner, A. 14 shares U. S. B. S. - - -	1,400 00
Gill, R. W. endorsed by Geo. Williams, 537 shares, U. S. B. S. - - - - - - - -	67,125 00
Goodwin, Lyde, 30 shares U. S. B. S. - -	1,092 88
Hall, Edw. 35 shares U. S. B. S. - - -	3,500 00
Harrison, Hall, endorsed by Lloyd Buchanan, 190 shares U. S. B. S. - - - - - -	24,000 00
Homans, Ben. 940 shares, State Bank, at par, -	940 00
Hawkins, J. L. 350 shares U. S. B. S. - -	35,000 00
	$584,982 88

Amount bro't forward,	$584,982 88
Hearsey, G. 20 shares U. S. B. S.	2,000 00
Hughlett, Wm. 80 shares U. S. B. S.	2,700 00
Higinbothom, Ralph, endorsed by Thos. Higinbothom, 1,100 shares U. S. B. S.	137,500 00
Johnson, R. M. endorsed by James Johnson, 402 shares U. S. B. S.	18,698 25
Johnson, Wm. Ward, James Johnson and Jno. T. Johnson, endorsed by S Smith & Buchanan and Geo. Williams, 4,000 shares as B. U. S.	100,000 00
Janvier, B. 20 shares U. S. B. S.	2,000 00
Keller & Forman, endorsed by Finley & Vanlear, 50 shares U. S. B. S.	6,000 00
La Reintrie, J. L. endorsed by James C. Neilson, 260 shares U. S. B. S.	32,500 00
Long, R. endorsed by W. Gray, 4 shares U. S. B. S.	500 00
Morton, Jno. A. Jr. endorsed by A. A. Williams, 631 shares U. S. B. S.	78,875 00
M'Henry, F. D. 10 shares U. S. B. S.	1,000 00
Muncks, A. endorsed by J. F. Bensamen, 40 shares, U. S. B. S.	5,000 00
Meridith, Jona. endorsed by D. A. Smith and a mortgage on city property, 900 shares U. S. B. S.	112,500 00
Morris, J. B. 150 shares U. S. B. S.	15,000 00
M'Kim, Wm. D. 100 shares U. S. B. S.	10,000 00
M'Coy, J. L. endorsed by N. F. Williams, 30 shares U. S. B. S.	3,750 00
Nenninger, J. & B. 30 shares U. S. B. S.	3,000 00
Patterson, Wm. 600 shares U. S. B. S.	45,000 00
Purviance, R. endorsed by R. Higinbothom, 300 shares U. S. B. S.	40,000 00
Polk, R. 80 shares U. S. B. S.	1,979 67
Raphel, S. & A. & Co. 10,000 shares State Bank at par value,	10,000 00
S. Smith & Buchanan, endorsed by Geo. Williams, 783 shares U. S. B. S.	97,875 00
S. Smith & Buchanan, endorsed by Geo. Williams, 5,500 at par B. U. S.	137,500 00
Sheppard, Thomas, endorsed by Lem. Taylor, 100 shares U. S. B. S.	12,500 00
	$1,490,860 78

Amount bro't forward.	$1,490,860 78
Sullivan, J. & J. endorsed by G. T. Dunbar, 7,000 shares U. S. B. S.	87,500 00
Smith, Jona. 600 shares U. S. B. S.	60,000 00
Schwartze, A. J. endorsed by N. F. Williams, 325 shares U. S. B. S.	37,500 00
Smith, D. A. 110 shares U. S. B. S. and 10,000 shares State Bank at par,	21,000 00
Swan, John, 100 shares U. S. B. S.	8,500 00
Stricker, John, endorsed by R. Hyatt, 200 shares U. S. B. S.	25,000 00
Williams, J. S. 62 shares U. S. B. S.	6,100 00
Williams, N. F. endorsed by A. J. Schwartze, 325 shares U. S. B. S,	37,500 00
Williams, Geo. endorsed by A. A. Williams, 1,775 share, U. S. B. S,	221,875 00
Williams Geo. endorsed by S. Smith & Buchanan, 7,526 shares at par B. U. S.	188,150 00
Wirgman, C. & P. 29 shares U. S. B. S.	2,900 00
White, John, 100 shares do.	10,000 00
Williams, S. 150 shares do.	15,000 00
Williams, A. A. endorsed by Geo. Williams, 103 shares U. S. B. S.	12,500 00
Williams, C. D. 29,800 shares U. S. 6 per cent.	29,800 00
Williams, C. D. endorsed by A. A. Williams, 250 shares U. S. B. S.	31,250 00
Winder W. H. 10,000 shares State Bank at par,	10,000 00
Stiles, Geo. Mayor, 89,000 shares City 6 per cent,	89,000 00
Ellicott, Thomas, 14,000 shares State Md.	14,000 00
Smythe, J. 4,000 shares State Md	4,000 00
	$2,402,435 78

And to lay a foundation for the introduction of this paper, by proving that it was a true copy of the list mentioned and referred to in the foregoing letters of October 26th and November 9th and 14th 1818, and stated in one of those of the 14th to have been actually sent; and that the original was lost; he first called Dennis A. Smith, who was examined. He proved that in 1818, he was a Director of the Parent Bank; and was in Philadelphia during the Autumn of that year, about the time when lists of loans on stock,

commonly called "Stock Lists" were called for: That he thinks Mr. Smith, the Cashier of the Parent Bank, advised that the stock list sent from the Baltimore Branch should be changed, and part of the stock loans transferred to loans on personal security, or bills receiveable: That he believes that the stock list which he understood to have been sent from the Baltimore Branch, was not presented in its original state to the Parent Board, but was corrected before it was handed in: That the correction advised by the Cashier of the Parent Bank, was to embrace loans for more than 25 per cent, or $125 per share: And that he received all his information on the subject from Jonathan Smith, the cashier of the Parent Bank. On his cross examination he stated, that James W. M'Culloh himself brought to Philadelphia, as the witness understood at the time, the statement of which Jonathan Smith recommended the alteration.

Andrew B. Bankson the Discount Clerk was then called, who proved that all notes are entered in the books, under the direction of the Cashier; who points out such as are to be entered as stock notes, and such as are to be entered as notes on personal security; all of which are entered accordingly.

Thomas B. Rutter, the Book Keeper of the Baltimore Branch for general accounts, and for preparing the statements, was then called and examined. He proved that twice a week, that is every Tuesday and Friday which were the discount days, statements were submitted to the Branch Board, containing an exposition of the actual situation of the branch on the preceeding day; its cash, its deposits, and the notes discounted on stock on personal security and on bills of exchange: That all these statements were contained in a book called "the statement book," which was always laid before the board: That once a week (on every Tuesday) a statement was made out for the Parent Board, and delivered to the Cashier to be transmitted to Philadelphia: That this weekly statement for the Parent Board, was always, or was intended to be, an exact copy from the "statement book," of the Tuesday's statement there contained: That on the 16th of November, 1818, being Tuesday, the regular weekly statement for that day appeared to have been made out and transmitted: That in November, 1818, but he does not recollect on what day, he made out a statement of loans on stock in the Baltimore Branch, or a "stock list," and delivered it to the Cashier, James W. M'Culloh, for transmission to Philadelphia: That this was the first stock list that had been made out for Philadelphia as far as he knew or believed: That he made it

out by order of the Cashier, who he thinks told him it was intended for the Parent Board: And that he understood it to have been prepared, *in obedience to a particular order from that board.*

The paper mentioned above, and purporting to be a list or statement of "loans upon stock, &c." was then presented to the witness, and he was asked by the Attorney General whether it was a copy of the stock list, which he had so prepared and delivered to James W. M'Culloh? He answered that he did not make it, and did not recollect ever having compared it with the original: That it was in the hand writing of J. L. La Reintrie, who was at that time a clerk in the Baltimore Branch, and now resided in the Island of Cuba: That he however believed it to be a true copy; not only because of its general resemblance and agreement, but because he had compared the amount of notes which it contained, $2,402,435 78, with the balance which appeared in the ledger to the debit of stock loans, on the 14th of November, 1818, and found them to agree exactly; that balance being $2,402,435 78. The ledger was then produced and referred to. It exhibited the balance to the debit of stock, as stated by the witness.

Mr. Rutter then proved, that on the 14th of November, 1818, James W. M'Culloh wrote and handed to him, an entry in relation to loans on stock, with directions to enter it in the day book of that day, which he accordingly did; from whence it was posted into the ledger on the same day, and made part of the stock account of that day, on which the above mentioned balance of $2,402,454 78 arose. The day book was then produced and proved by Mr. Rutter, who turned to the entry in question, and read it to the court as follows—viz:

Bills receiveable to Loans on Stock, *Dr.*

For this sum, being amount that had at various times been charged, as lent upon the hypothecation of stock at this office, but which should have been charged to bills receiveable, as ascertained by making up a list of the loans existing upon stock, hypothecated here and at the Bank of the United States $852,685 64.

The witness on being further examined stated, that he had made this entry merely from the paper handed to him by Mr. M'Culloh, which he had copied exactly into the day book.

The statement book of the Branch Bank already in evidence was then referred to, by which it appeared that on the 7th of May, 1818, the amount of loans on stock was - - - $3,301,381 37
That from this day till November 2d 1818, it

stood nearly at the same sum, never exceeding - 3,466,000 00
Nor falling below - - - - - - - - - - - - 3,255,819 42
which was its amount on that day.
That on the 9th of November, 1818, it was - - - 3,255,119 42

On the 12th, - - - - - - - - - - - - - - 3,255,119 42
And that on the 16th it fell to - - - - - - - 2,408,735 78

Making a difference of - - - - - - - - - $846,383 64
Which was transferred by the effect of the entry of Nov. 14th, 1818, to the account of loans on personal security: That from the 16th of Nov. 1818, to the 4th of January 1819, the amount of loans on stock, as appearing on the statement book, stood nearly at the same, never rising above, - - - 2,422,485 78
And so on till May 20th 1819, till which day the highest sum was - - - - - - - - - - - - 2,451,093 78

The Attorney General then shewed from the statement book, that after this entry of Nov. 14th, 1818, there was a rise in the apparent amount of loans on personal security, corresponding with the fall in that of loans on stock; which rise was also the effect of this entry.

On the 9th of Nov. 1818, loans on personal security, or bills receivable, stood at - - - - $3,665,703 96
On the 12th of Nov. 1818, at - - - - - 3,655,352 80
And on the 16th of that month, the first statement day after the entry, at - - 4,438,432 08
At which it continued, with little variation, through the rest of the year.

He then shewed that the reduction in the amount of stock loans on the books, was produced by the entry of November 14th 1818, in this manner. The amount of reduction was $846,383 64

By recurrence to the Ledger it appeared, that between the 12th and the 16th of November, in the statements of which days the reduction appeared, there were some new loans on stock, and some payments on old loans; and that the excess of new loans over payments, was - - - - - - - - - - - - - - - 6,300 00

which sum added to the reduction makes the exact amount of the entry, - - - - - - - - $852,683 64

He then shewed that this entry, thus traced to one of the Traversers, and materially affecting a business in which they were mutually and jointly concerned, corresponded precisely with the paper, the competency of which he was endeavouring to establish; because the amount of stock which it contains, $2,402,435 78, agrees precisely with the balance stated in the Ledger, on an account of which this entry, or rather the sum of $852,683 64 which it transfers, makes a part.

Peter Benson, one of the Clerks of the Parent Bank, was then called to prove the loss of the statement, or "Stock List," which appears by the letter from James Wm. M'Culloh to Jonathan Smith, of November 14th, 1818, to have been transmitted on that day to the Parent Board, and of which the paper in question was alleged to be a copy. This witness swore that by order of the President of the Parent Board, and with the assistance of the present Cashier, he had lately made very full and careful search, in the Bank of the United States, for the stock list transmitted from the Baltimore Branch, in November 1818, but could not find it; and that Jonathan Smith, who was Cashier of the Parent Bank at that period, had resigned before this search was made, and is now residing in Philadelphia. On this proof the Attorney General contended, that the paper in question was competent evidence in the case, and offered it as such.

It was objected to by the Counsel for the Traversers, as not being the best evidence of which the matter was susceptible: because admitting the existence and loss of the original to have been proved, which might well be questioned, since Jonathan Smith to whom it was alleged to have been sent was alive, and had not been produced, still there was no proof of this supposed copy. La Reintrie, by whom this paper appeared in proof to have been written, was alive, and ought to have been produced.

The court, after hearing the Counsel for the prosecution, unanimously sustained the objection, and the paper was rejected.*

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* It is deemed proper to introduce here some remarks on this list, which although adjudged on legal grounds to be incompetent evidence, carries on its face most satisfactory *proof* of its authenticity.

The first remark is, that it represents James W. M'Culloh, by whose direction it was framed, as owing nothing on Stock Loans; although he then owed, as his share of the great stock operation, $571,864 89 on notes called stock notes which were dated but twelve days, and discounted but two, before this list was made: as fully appears by the testimony already stated.

The Counsel for the Traversers then objected to the letters of October 26th and Nov. 9th and 14th, 1818, from James W. M'Culloh to Jonathan Smith; on the ground that as they related to a stock list which was not produced or proved, they could not be received in evidence, and thus be allowed indirectly to supply its place.

To this it was answered on the part of the state, that these letters stated facts distinct from the stock list. They stated that mistakes had been discovered in the books, which consisted in charging various sums to the account of stock loans, which were really lent on personal security; and that the delay in furnishing the stock list, called for by the resolution of October 20th 1818, had been produced by the necessity of previously tracing and correcting these mistakes. This appeared abundantly from the books themselves, and from the testimony of the clerks, to be an absolute falsehood: And this attempt to impose on the Parent Bank, in relation to the very loans which form the subject of the indictment, was a very strong feature of the transaction, and tended to prove the fraudulent intent, which constituted the chief ground of the charge.

The court unanimously resolved, that these letters, so far as they stated facts distinct from the stock list, were competent evidence under this indictment. They therefore over ruled the objection, and the letters were received.

The Attorney General, to shew how the loans on stock really stood on the books of the Branch Bank, on the 13th of November 1818, and that no such mistakes or corrections as were mentioned in the letters of October 26th and November 9th and 14th, did in in fact exist or were made, produced a list of stock loans as they really stood on that day, and proved it by the original books from which it was made, and the testimony of the clerk who made it. He then read it in evidence as follows:

It will be remarked in the second place, that S. Smith & Buchanan and George Williams are represented, as having each but two stock notes, amounting for the whole four to but $645,400; which was thus represented as the whole stock debt of the concern, instead of $1,542,136 12, its real amount at that time. Why this sum of $645,400 was fixed on, will appear in the progress of the trial. The third remark is, that of the four notes thus reported as being due from these parties, one only, that of $97,975 is a real note. All the others were fictitious; as fully appears by a comparison of this paper, with the preceding statements and evidence.

List of Stock Notes as taken from the Books of the Office of Bank United States at Baltimore 13th November 1818.

327	J. C. Buchanan, J. A. Buchanan, due 25th Dec. 1817,			$17,000
333	ditto J. A. Buchanan, due 28th Dec. 1817,			11,500
323	ditto J. A. Buchanan, due 24th Dec. 1817,			14,000
——	300 shares.			
414	James Beatty	17th Nov. 1817	7,500	
631	ditto	12th Jan. 1818	7,500	
———	150 shares U. S. Bank stock		———	——15,000
418	A. Burt 80	ditto 25 Nov. 1817		10,000
539	Bradford & Cooch	18th Dec "	2,000	
591	ditto	1st Jan. 1818	2,000	
——	40 shares U. S. B. S.		———	——4,000
695	Wm. Crawford, 15 do	14th Nov. 1817		1,500
417	John Coats	10 do 14th Nov.		450
419	Calhoun & Matthews, S. Smith & B.	17th Nov.	25,000	
423	Ditto	18th "	10,000	
473	Ditto	4th Dec.	12,000	
478	Ditto	5th "	20,000	
506	Ditto	15th "	5,000	
554	Ditto	23rd "	7,500	
555	Ditto S. Smith & B.	24th Dec.	5,000	
576	Ditto	do. 28th "	10,000	
577	Ditto	do. 28th "	4,400	
585	Ditto	30th "	17,500	
457 & 8	Ditto	30th "	10,000	
——	860 shares		———	——126,400
424	P. Chatard, 30 shares	19th Nov. 1817		3,000
428	A. Candolle, 24 do	21st Dec.		1,200
507	James Calhoun,	15th "	8,000	
560	Ditto	25th "	2,000	
581	Ditto	29th "	9,000	
——	200 shares		———	——19,000

412	Geo. T. Dunbar,	17th Nov.	20,000		
795	Ditto	J. & J. Sullivan 15th Nov. 1817	37,500		
797	Ditto	R. Higinbothom, 15th Nov.	30,000		
798	Ditto	do. 15th "	7,500		
——500 shares			———		57,500
413	C. Dugan,	17th "	16,000		
605	Ditto	5th Jan. 1818	14,000		
——300 shares			———		30,000
415	John Donnell,	17th Jan. 1818	6,000		
437	Ditto	22nd "	3,000		
453	Ditto	29th "	3,500		
481	Ditto	27th Nov. 1817	30,000		
——600 shares,			———		42,500
467	C. Deshon,	30th Nov. 1817	15,000		
505	Ditto	15th Dec.	6,000		
544	Ditto	22nd "	18,000		
557	Ditto	25th "	30,000		
——600 shares			———		69,000
9	Jno. B. Davidge, $5,000 S. B. stock, 24th Nov. 1817				5,000
477	A. H. Falconar	6th April 1819	3,125		
659	Ditto	15th Jan.	15,000		
44	Ditto	25th Dec.	6,250		
——195 shares			———		24,375
542	Tho. Finley, 21st Dec. 1817, $10,000 Dec. 29th $5,000, 150 shares				15,000
430	James Gray,	30 shares 20th Nov. 1817			2,000
451	R. W. Gill,	28th Jan. 1818	14,500		
489	Ditto	9th Dec. 1817	13,000		
490	Ditto	Ditto	4,550		
526	Ditto	17th Ditto	2,800		
540	Ditto	19th Ditto	15,500	88	
543	Ditto	22nd Ditto	7,750		
586	Ditto	30th Ditto	5,000		
587	Ditto	31st Ditto	1,875		
588	Ditto	Geo. Williams, 31st Dec. 1818	7,115	53	
633	Ditto	12th Jan. 1819	5,200		
——537 shares			———		77,291 41

471	Madame Girard, 9 shares 3rd Dec. 1818			200	
472	Fred. C. Graf, 4th "			12,000	
590	Madame Girard 9 shares 30th Nov.			500	
598	Lyde Goodwin, 30 do. 3rd March 1818			1,092	88
893	Ralph Higinbothom 1,100 shares 29th Nov. 1817		30,000		
894	Ditto ditto		7,500		
325	Ditto H. Payson, 26th Dec.		25,000		
627	Ditto 10th March 1818		50,000		
628	Ditto Thos. Higinbothom, 9th Jan. 1818		12,500		
				162,500	
990	Wm. Hughlett, 80 shares, 8th Dec. 1817		2,000		
240	Ditto 14th Nov.		700		
				2,700	
425	Hall Harrison, L. Buchanan, 190 shares 19th Nov. 1817			24,000	
427	Edward Hall, 35 shares 20th Nov. 1817			3,500	
450	James L Hawkins, 350 do. 29th Jan. 1818			35,000	
192	Ben. Homans $940 State B. S. 11th Feb. 1818			940	
524	Richard Hyatt, 16th Dec. 1817			31,250	
482	P. Janvier, 20 shares, 8th Dec.			2,000	
826	R. M. Johnson, 402 shares, 17th Nov. 1817			41,500	
635	Ditto S. Smith & B. Geo. Williams, 5th March 1818			107,198	23
479	Keller & Forman 7th Dec. 1818		5,000		
480	Ditto ditto		1,000		
	50 shares			6,000	
592	J. L. La Reintrie, 1st Jan. 1818		7,500		
615	Ditto 7th do.		25,000		
	260 shares			32,500	
606 & 607	Reuben Long, 4 shares 5th Jan. 1818			600	
674	J. W. M'Culloh, 15th April 1818		3,800		
42	Ditto 22nd Dec. 1817		2,000		
43	Ditto ditto		1,400		
597	Ditto 3rd March 1818		25,000		
642	Ditto Geo. Williams, 5th March 1818		155,600		
613	Ditto Geo. Williams, 5th March 1818			156,723	23

644	Ditto	S. Smith & B. 5th March 1818	15,000		
645	Ditto	Geo. Williams 5th March 1818	52,041 66		
646	Ditto	Geo. Williams, 5th March 1818	7,136 12		
647	Ditto	S. Smith & B. 5th March 1818	112,500		
248	Ditto	S. Smith & B. 16th Dec. 1817	15,000		
249	Ditto	S. Smith & B. 17th Dec. 1817	15,000		
					561,201 01
368	John A. Morton, Jr.	A. A. Williams, 6th Dec 1817	37,275		
426	Ditto	19th Nov. 1818	10,000		
473	Ditto	Geo. Williams 4th Dec.	2,600		
530	Ditto	18th Dec.	10,000		
556	Ditto	23rd Dec. 1817	4,100		
561	Ditto	25th Dec.	8,800		
620	Ditto	8th Jan. 1818	2,500		
629	Ditto	11th do.	3,300		
——631 shares					78,875
420	Jona. Meredith,	D. A. Smith, 17th Nov. 1817	77,065 38		
454	Ditto	30th Nov. 1817	54,000		
——900 shares					131,065 38
455	Jno. B. Morris, 150 shares	30th Nov. 1817			15,000
541	Wm. D. M'Kim 100 do.	19th Dec. "			10,000
575	And. Muncks.	28th "	1,000		
618	Ditto	8th Jan.	4,000		
——40 shares					5,000
617	F. D. M'Henry, 10 shares,	7th "			1,000
365	Nenningers,	6th Dec. 1818	500		
366	Ditto	7th "	500		
621	Ditto	8th Jan. 1819	500		
438	Ditto	20th Nov. 1818	1,500		
——30 shares,					3,000
466	W. Patterson & Son	1st Dec.	11,000		
558	Ditto	25th "	10,000		

619	W. Paterson & Son, 8th Jan. 1819	9,000		
658	Ditto 15th "	18,000		
——600 shares		———	——48,000	
418	R. Purviance, R. Higinbothom, 17th Nov. 1818	6,500		
468	Ditto 1st Dec. do	30,000		
469	Ditto R. Higinbothom ditto	10,000		
——300 shares		———	——46,500	
630	Rebecca Polk, 80 shares, 12th Jan. 1819		1,979	67
447	Raphels, 24th Nov. 1818	2,000		
483	Do. 8th Dec.	2,500		
559	Do. 25th "	3,000		
632	Do. 12th Jan. 1819	2,500		
—— $10,000 State Bank Stock		———	——10,000	
918	S. Smith & Buchanan, Hollins & M'Blair 29th Nov. 1818	17,500		
205	Ditto Geo. Williams 3 Dec 1818	35,000		
636	Ditto Ditto 5th March 1819	11,426	77	
637	Ditto Ditto J. W. M'C. 5th March 1819	$25,000		
638	Ditto Ditto ditto ditto	314,000		
639	Ditto 5th March 1819	25,000		
640	Ditto ditto	97,875		
641	Ditto ditto	25,000		
——6,283 shares		———	——850,801	77
921	D. A. Smith, 110 shares 1st Dec. 1818	40,000		
922	Ditto $10,000 State B. S. 28th Nov. 1818	14,865	34	
		———	——54,865	34
411	J. & J. Sullivan, C. D. Williams 17th Nov. 1818	31,250		
456	Ditto 30th "	6,250		
574	Ditto 26th Dec.	12,500		
796	Ditto Geo. T. Dunbar 15th Nov.	37,500		
——700 shares,		———	——87,500	
421	A. J. Schwartze, N. F. Williams, 17th Nov.	37,500		
459	Ditto " 30th Nov.	13,000		
580	Ditto " 29th Dec.	7,500		
——325 shares		———	——58,000	

452	Jno. Stricker 200 shares, 28th Jan. 1819			25,000
491	Thos. Sheppard, 100 shares, 9th Dec. 1818			12,500
527	Jona. Smith, 600	do. 16th Jan. 1819		60,000
611	Jno. Swan, 100	do. 7th Jan.		8,500
824	N. F. Williams,	17th Nov. 1818	3,750	
422	Ditto	A. J. Schwartze, 17th Nov. 1818	37,500	
	325 shares			41,250
416	Wm. H. Winder $10,000 State bank stock, 17th Nov, 1818			4,500
429	C. & P. Wirgman, 29 shares, 20th Nov. 1818			2,900
470	Jno. White, 100 shares, 2nd Dec. 1818			10,000
528	Amos A. Williams, 103 shares, Geo. Williams, 17th Dec. 1818			12,500
596	Cum'd D. Williams, $29,800 state bank stock, 26th Nov.			29,800
616	Jno. S. Williams,	7th Jan. 1819	2,500	
657	Ditto	15th Dec. 1818	3,600	
	62 shares			6,100
232	Sarah Williams, 150 shares 10th Dec. 1818			15,000
634	George Williams, 9,801 shares, at B. U. S. A. A. Williams, 5th March 1819			169,833 34
				$3,369,869 03

He then recalled to the recollection of the court, the resolution of the Parent Board of February 19th 1819, peremptorily calling upon the Baltimore Branch, for a list or statement of Loans on Stock, as then existing there, and for a similar list of loans on personal security; and then produced proved and gave in evidence an original stock list, under the signature of the Traverser M'Culloh, and bearing date on the 8th of March, 1819; which had been transmitted by him to the Parent Board. This paper was then read as follows:

Loans upon Stock and Personal Security, made and existing at the Office of Discount and Deposit of the Bank of the United States at Baltimore, March 8th, 1819.

Beatty James, 150 shares U. S. B. S. par, - - -	$15,000 00
Buchanan, J. C. 300 shares U. S. B. S. 11900 shares city sixes, - - - - - - - - -	40,000 00
	$55,000 00

Amount bro't forward	$555,000 00
Bradford & Cooch, 40 shares U. S. B. S. under par,	5,800 00
Burt, Andrew, endorsed by Fridge & Morris, 80 shares U. S. B. S. at the rate of 125 per share,	10,000 00
Calhoun, James 200 shares U. S. B. S. under par,	16,625 00
Coats, John 10 shares U. S. B. S. under par,	450 00
Crawford, William 15 shares U. S. B. S. par,	1,500 00
Candolle, And. 24 shares U. S. B. S. under par,	1,200 00
Chatard, Peter 30 shares U. S. B. S. par,	3,000 00
Calhoun & Mathews, endorsed by S. Smith & Buchanan, 860 shares U. S. B. S. at the rate of 123 per share,	106,430 00
Deshon, Christopher endorsed by A. J. Schwartze, 600 shares U. S. B. S. at the rate of 109 pr share,	65,300 00
Dugan, Cumberland 300 shares U. S. B. S. par,	30,000 00
Dunbar, G. T. endorsed by J. & J. Sullivan, 500 sh's. U. S. B. S. at the rate of 115 per share,	57,500 00
Donnell, John 600 shares U. S. B. S. under par,	35,000 00
Ellicott, Thomas 113 shares U. S. B. S. par,	11,300 00
Etting, Solomon 225 shares U. S. B. S. par,	22,500 00
Exchange, Company, Balt. $20,000 U. S. 6 per cent stock,	15,000 00
Finley, Thomas endorsed by George Williams, N. F. Williams 471 shares U. S. B. S. at the rate of 108 per share,	50,015 00
Falconar, A. H. endorsed by S. G. Griffith, 120 sha's. U. S. B. S. at the rate of 125 per share,	15,000 00
Gerard, Madame 9 shares U. S. B. S. under par,	700 00
Gray, James 30 shares U. S. B. S. under par,	2,000 00
Goodwin, Lyde 30 shares U. S. B. S. under par,	1,000 00
Gill, R. W. endorsed by John Gill, George Williams, 537 shares U. S. B. S. at the rate of 125 pr share,	67,125 00
Graf, F. C. $12,000 U. S. 6 per cent stock,	12,000 00
Higinbothom, Ralph endorsed by Thos Higinbothom, J. Gooding, 1,100 shares U. S. B. S. at the rate of 125 per share,	137,500 00
Homans, Benj. $910 Franklin Bank stock	940 00
Hughlett, William 80 shares U. S. B. S. under par,	4,700 00
Hall, Edward 35 shares U. S. B. S. par,	3,500 00
	$731,085 00

Amount bro't forward,	$731,085 00
Hawkins, J. L. 350 shares U. S. B. S. par,	35,000 00
Hyatt, Richard endorsed by A. A. Williams, 250 sh's U. S. B. S. at the rate of 125 per share,	31,250 00
Janvier, P. 20 shares U. S. B. S par,	2,000 00
Johnson, R. M. endorsed by James Johnson, 402 sh's U. S. B. S. at the rate of 120 per share,	48,098 23
Johnson, R. M. William Ward, James Johnson John T. Johnson, endorsed by S. Smith and Buchanan, and George Williams, 4,000 shares at B. U. S. at par 25 adv. at office,	100,000 00
Keller & Foreman, endorsed by Finley & Van Lear, 50 shares U. S. B. S. at the rate of 120 per share	6,000 00
Long, Reuben 4 shares U. S. B. S. par,	400 00
La Reintric, J. L. endorsed by J. C. & R. Neilson, 127 shares U. S. B. S. at the rate of 125 pr. sh're.	15,875 00
Murray, W. H. endorsed by George Williams, 104 shares U. S. B. S. at the rate of 125 per share,	13,000 00
M'Culloh, James W. 34 shares U. S. B. S. par,	3,400 00
M'Coy, J. L. endorsed by N. F. Williams, 30 shares U. S B. S. at the rate of 125 per share,	3,750 00
Morris, J. B. 150 shares U. S. B S. par,	15,000 00
Meredith, Jonathan endorsed by D. A. Smith, mortgage on city property 1,048 shares U. S. B. S. at the rate of 125 per share,	131,000 00
M'Kim, W. D. 100 shares U. S. B. S. under par	9,500 00
Muncks, Andw. endorsed by J. F. Bensaman, 40 sh's. U. S. B. S. at the rate of 125 per share,	4,950 00
M'Henry, F. D. 10 shares U. S. B. S. par,	1,000 00
Morton, John A. jr. endorsed by A. A. Williams 500 shares U. S. B. S. at the rate of 122 per share,	60,795 00
Nenninger, J. & B. 30 shares U. S. B. S. under par,	2,500 00
Patterson & Sons Wm. 600 shares U. S. B. S. under par,	47,500 00
Polk, Rebecca 80 shares U. S. B. S. under par,	1,979 67
Purviance, Robert endorsed by R. Higinbotham, 300 shares U. S. B. S. at the rate of 125 per share,	37,500 00
Raphael, & Co. S and A. 10,000 Union Bank stock,	9,850 00
Ricaud, Rebecca 72 shares U. S. B. S. under par	2,500 00
	$1,514,532 90

Amount bro't forward	$1,314,532 90
Sheppard, Thomas 100 shares U. S. B. S. under par, -	10,000 00
Schwartze, A. J. endorsed by N. F Williams, 325 shares U. S. B. S. at the rate of 120 per share, -	37,500 00
Sullivan, J. and J. endorsed by G. T. Dunbar, Calhoun and Mathews, 700 shares U. S. B. S. at the rate of 125 per share, - - - - - -	86,875 00
Swan, John 100 shares U. S. B. S. under par, -	8,500 00
S. Smith and Buchanan endorsed by Geo. Williams 783 shares U. S. B. S. at the rate of 125 per sh're. -	97,875 00
S. Smith and Buchanan endorsed by Geo. Williams, 5,500 par at B. U. S. stock 25 adv. at office, -	137,500 00
Stiles, George, Mayor, 89,000, 6 per cent Baltimore City stock, - - - - - - - - -	89,000 00
Stricker, John endorsed by George Williams 200 sh's U. S B S. at the rate of 125 per share, - -	25,000 00
Smith, D. A. 110 shares U. S. B. S. $10,000 Havre de Grace Bank stock, - - - - -	21,000 00
Taylor, Lemuel 150 shares U. S. B. S. par, - -	15,000 00
Tyson, Isaac 112 shares U. S. B. S. par - - -	11,200 00
Williams, N. F. endorsed by A. J. Schwartze, 325 shares U. S. B. S. at the rate of 120 per share, -	37,500 00
Williams, John S. 62 shares U. S. B. S. under par, -	5,920 00
Williams, Sarah 150 shares U. S. B. S. par, - -	15,000 00
Williams A. A. endorsed by George Williams, 103 shares U. S. B. S. at the rate of 120 per share, -	11,875 00
Williams, C. D. 400 shares U. S. B. S. par, - -	40,000 00
Wirgman, C. and P. 29 shares U. S B. S. par, - -	2,900 00
White, John 100 shares U. S. B S. par, - -	10,000 00
Williams, George endorsed by A. A. Williams 1,775 shares U. S. B. S. at the rate of 125 per share, -	221,875 00
Williams, George endorsed by S. Smith and Buchanan 7,526 shares par at B. U. S. 25 adv. at office, -	188,150 00
Young, P. A. endorsed by Hu. Young, 104 shares U. S. B. S. at the rate of 125 per share, - - -	13,000 00
	$2,400,202 90

JAMES W. M'CULLOH, Cash.

He then remarked to the court, and requested them to bear in mind, that in this list thus made out and returned under a special and positive order of the Parent Board, James W. M'Culloh

appeared as a borrower on stock, to the amount of only $3400 on his own note without an endorser, secured by a pledge of 34 shares of stock. His name did not further appear upon the list, either as a borrower a drawer or an endorser. S. Smith and Buchanan appeared as borrowers on two notes drawn by themselves and endorsed by George Williams, to the amount of $235,375; one of which notes amounting to $137,500 was stated to be secured at the rate of 25 per. cent. advance on 5,500 shares of stock pledged at the Parent Bank at par, and the other, for $97,875 was made to appear as resting on a pledge of 783 shares in the Branch Bank, at 125 per. cent: and George Williams was represented as a borrower, to the amount of $410,025, on two notes drawn by himself; one of which for $221,875 was represented to be endorsed by Amos A. Williams, and secured by a pledge of 1775 shares of stock in the Branch Bank at 125 per. cent; and the other of $188,150, to be endorsed by S. Smith & Buchanan, and secured by an advance of 25 per. cent above par on 7526 shares, pledged at par in the Parent Bank. These Loans to S. Smith & Buchanan and George Williams, on these four notes, amounted to $645,400; which was thus represented as the whole amount of loans obtained as stock loans, by these parties; for the small loan to M'Culloh of $3,400, on 34 shares at par, appeared to be his seperate concern. Thus it stood on the stock list transmitted to Philadelphia, on the 8th March, 1819, in answer to the pressing and peremptory call of the Parent Board. To shew how it stood in fact, he produced a list of stock loans, of the same date, made out from the Books of the Baltimore Branch; and having proved it by the clerk who made it out, and by the books themselves which were referred to—he read it in evidence as follows:

A List of Loans upon Stock which appears by the Books to have existed at the Office of the Bank of the United States at Baltimore on the 8th March 1819.

37	James Beatty,	7,500 due 16th March 1819		
74	ditto	7,500 23rd do		
——150 shares		———		15,000
114	Bradford & Cooch,	29th March 1819	2,000	
201	ditto	4th May	1,900	
167	ditto	23rd April	1,900	
——10 shares			———	5,800
116	And. Burt,	31st March	8,000	
117	ditto Fridge & Morris	do.	2,000	
——80 shares			———	10,000

177	J. C. Buchanan, 300	11,900 City bank stock 30th April,		40,000
84	P. Chatard, 30	25th March		3,000
664	Wm. Crawford, 15	17th May		1,500
792	A. Candolle, 24	24th March		1,200
60	Jno. Coats	20th do.		450
65	Calhoun & Matthews	23d March	20,000	
66	ditto Smith & B.	do	5000	
83	ditto	24th do	10,000	
128	ditto	5th April	7,000	
129	ditto Smith & B.	do	3,000	
139	ditto ditto	9th do	12,000	
141	ditto	do	20,000	
158	ditto Smith & B.	20th do	4,700	
173	ditto	27th do	7,125	
174	ditto ditto	do	4,750	
182	ditto	30th do	4,180	
183	ditto	do	9,500	
196	ditto	4th May	16,625	
——860 shares			——	123,930
159	James Calhoun,	20th April	7,600	
178	ditto	30th do	1,900	
199	ditto	4th May	7,125	
——200 shares			——	16,625
665	Geo. T. Dunbar,	17th March	30,000	
666	ditto	do.	7,500	
71	ditto	23rd do	20,000	
—— 500 shares			——	57,500
726	J. B. Davidge	26th May		5,000
730	John Donnell	30th March	30,000	
89	ditto	26th do	3,000	
119	ditto	2nd April	2,000	
——600 shares			——	35,000
15	Cumberland Dugan,	9th March	14,000	
61	ditto	23rd do	16,000	
——300 shares			——	30,000
132	Chris. Deshon	5th April	15,000	
160	ditto	20th do	5,000	
171	ditto	27th do	10,000	
172	ditto A. J. Schwartze, do		5,300	
185	ditto	30th do	30,000	
——600 shares			——	65,300

16	Thos. Ellicott, 113	29th March		45,000
40	Exchange Company, $20,000 of 6 per cents,	17th March	10,000	
122	ditto	3rd April	5,000	
				15,000
44	A. H. Falconar, 120	19th March		15,000
13	Finley & Van Lear, Geo. Williams,	4th April,	15,065	
80	Thos. Finley	25th March	19,000	
165	ditto	23rd April	10,000	
81	ditto R. Hyatt, N. F. Williams,	25th March	950	
198	ditto	4th May	5,000	
	471 shares			50,015
38	R. W. Gill,	16th March	5,200	
152	ditto	13th April	13,000	
153	ditto Jno. Gill	do	4,550	
163	ditto	20th do	2,800	
166	ditto	23rd do	15,500	
170	ditto	27th do	7,750	
194	ditto Geo. Williams	4th May	8,975	
195	ditto	do.	5,000	
215	ditto	3rd April	4,350	
	537 shares			67,125
91	James Gray 30	26th March 1819		2,000
140	F. C. Graff	$12,000 6 pr cts. 9th April		12,000
144	Madame Gerard	9th April	200	
202	ditto	do	500	
	9 shares			700
209	Lyde Goodwin, 30	6th July		1,000
667	Ralph Higinbothom,	17th March	30,000	
735	ditto	1st April	30,000	
34	ditto Thos. Higinbothom,	12th March	12,500	
58	ditto do.	20th do	7,500	
126	ditto Jno. Gooding	4th April	7,500	
180	ditto Lem. Taylor,	30th do	6,250	
627	ditto	9th March	50,000	
	1,100 shares			143,750

760	Wm. Hughlett	11th June	2,000	
790	ditto	24th do	2,000	
59	ditto	20th March	700	
———	80 shares		———	4,700
92	Edward Hall, 35	26th do		3,500
120	J. L. Hawkins 350	1st June		35,000
156	Ben. Homans, Jr. 8940	Franklin B. 13th Ap.		940
162	Rd. Hyatt, 250	A. A. Williams, 20th do		31,250
635	Rd. M. Johnson, 402,	5th March	107,198 23	
689	ditto 4,000,	B. U. S. 20th do.	40,200	
690	ditto	do	1,300	
			———	148,698 23
151	P. Janvier 20	13th April		2,000
142	Keller & Forman	Finley & Vanlear, 9th April	1,000	
143	ditto		5,000	
———	50 shares		———	6,000
18	Reuben Long	9th March	200	
19	ditto	do	400	
———	4 shares		———	600
186	J. L. La Reintrie	4th July	6,700	
187	ditto	ditto	1,675	
211	ditto	J. C. Neilson, 7th May	7,500	
———	127 shares		———	15,875
3642	J. W. M'Culloh	Geo. Williams, 5th March	155,600	
643	ditto	do	156,723 23	
644	ditto	S. S. & B.	15,000	
645	ditto	Geo. W.	52,041 66	
646	ditto	do	7,136 12	
647	ditto	S. S. & B.	112,500	
729	ditto	do 15th March	3,800	
782	ditto	do 19th April	15,000	
783	ditto	do 20th do	15,000	
795	ditto	25th June	1,400	
796	ditto	do	2,000	
———	34 shares			
203	ditto	N. F. Williams 4th May	25,000	
42	ditto	S. S. & B. 29th March	20,000	
43	ditto	do 31st do	11,000	
			———	592,201 01

26	J. A. Morton, Jr.	12th March	2,500		
35	ditto	15th "	3,300		
87	ditto	25th "	10,000		
145	ditto	9th April	2,600		
168	ditto	23rd	10,000		
175	ditto Geo. Williams	27th	4,180		
184	ditto	30th	8,360		
212	ditto A. A. Williams	7th May	19,855		
———	500 shares.		———		60,795
688	J. L. M'Coy, 30 shares,	20th May,			3,750
22	F. D. M'Henry, 10 shares,	11th May,			1,000
27	A. Muncks,	12th	4,000		
200	ditto	4th	950		
———	40 shares		———		4,950
67	Jonathan Meredith, D. A, Smith,	23rd March,	12,500		
68	ditto	do	14,565	38	
69	ditto		50,000		
133	ditto D. A. S.	5th April	10,000		
134	ditto do		4,000		
135	ditto		40,000		
———	1,048 shares and mortgage on property		———		131,065 38
127	J. B. Morris, 150 shares,	5th April			15,000
190	W. H. Murray	4th July	10,100		
191	ditto Geo. Williams,	do	2,600		
———	104 shares,		———		13,000
23	Nenningers,	10th May	500		
24	ditto	11th "	500		
90	ditto	26th March	1,500		
———	30 shares		———		2,500
169	Wm. D. M'Kim, 100 shares	23rd April			9,500
25	W. Patterson & Sons,	12th March 1819	9,000		
132	ditto	6th April	11,000		
45	ditto	19th	18,000		
179	ditto	30th	9,500		
———	600 shares		———		47,500
36	Rebecca Polk, 80	16th March			1,979 67
72	R. Purviance, R. Higinbothom,	23d Ma.	6,500		
127	ditto	do. 6th April	10,000		
128	ditto	"	30,000		
———	300 shares		———		46,500

39	Raphels	16th March	2,500	
115	ditto	30th do.	2,000	
155	ditto	13th April	2,500	
176	ditto	30th	2,850	
——10,000 Union Bank Stock			———	9,850
636	S. Smith & Buchanan, Geo. Williams,	5th March	11,126 77	
637	ditto J. W. M'C.	do	325,000	
638	ditto do	do	314,000	
639	ditto do	do	25,000	
640	ditto do	do	97,875	
641	ditto do	do	25,000	
125	ditto Holins & M'Blair,	June 2nd,	17,5000	
138	ditto Geo. Williams,	June 7th,	35,000	
204	ditto	July 6th,	20,000	
——783 shares & 5,500 at par B. U. S.			———	870,801 77
82	Rebecca Ricaud 72	22nd March,		2,500
669	J. & J. Sullivan	17th March	30,000	
670	ditto Geo. T. Dunbar		7,500	
68	ditto Calhoun & Matthews,	23rd March	6,250	
64	ditto	do.	25,000	
130	ditto	5th April	6,250	
192	ditto	30th do	11,875	
——700 shares,			———	86,875
181	H. Payson, Wm. Lorman 30th do			6,250
73	A. J. Schwartze, N. F. Williams,	23rd March,	37,5000	
197	ditto "	4th May	7,500	
131	ditto "	5th April	13,000	
——325 shares,			———	58,000
85	Jno. Swan, 100 shares, 11th March			8,500
121	D. A. Smith,	3rd April	15,000	
129	ditto	6th "	21,000	
745	ditto	2nd Feb.	19,000	
——110 shares & $10,000 H. de G. B.			———	55,000
124	Jno. Stricker, 200 shares 3rd April			25,000
157	Thos. Sheppard, 100 shares 13th do			10,000
17	Lem. Taylor, 150 shares, 29th March			15,000

767	Sarah Williams, 150 shares 13th April			15,000
634	Geo. Williams, A. A. Williams, 1,775 shares, and 7,527 at par at B. U. S. 5th March			159,833 34
21	Jno. L. Williams,	11th March	2,500	
161	ditto	20th April	3,420	
	62 shares.			5,920
62	Wm H. Winder,	23rd March	4,500	
193	ditto	4th May	5,225	
	Pledge of Real Estate,			9,725
70	N. F. Williams 325 shares, A. J. Schwartze, 23rd March,			37,500
88	C. & P. Wirgman, 28 shares 26th do			2,900
136	Jno. White, 100 shares 7th April,			10,000
151	C. D. Williams, 400 shares 13th April			30,000
164	A. A. Williams, 103 shares, Geo. Williams, 20th April,			11,875
188	Peter A. Young,	4th July	10,400	
189	ditto Hu. Young	"	2,600	
	104 shares.			13,000
				$3,393,729 40*

Here it would be remarked, that James W. M'Culloh appeared to be a borrower on Stock, upon notes drawn by himself and endorsed by S. Smith & Buchanan or George Williams, to the amount of $588,801 01, exclusive of $3400, on 34 shares of stock, for his individual account, as already mentioned: S. Smith & Buchanan, upon notes drawn by themselves, and endorsed by George Williams or James W. M'Culloh, and in one instance by Hollins & M'Blair, to the amount of $870,801 77 and George Williams, on one note drawn by himself and endorsed by Amos A. Williams, to the amount of $169,833 34: which three sums make a total a-

* It is proper to remark, that the statement in this list of the property pledged, is taken from the Stock and Pay Lists of the same date (March 8th 1819) transmitted by Buchanan and M'Culloh to Philadelphia. The books of the bank exhibit no account or statement whatever of the pledges on which notes called "Stock Notes" were discounted.

In the same manner the account of the pledges contained in the real Stock List of November 14th, 1818, is taken not from the books, where no such account appears, but from the papers offered but not received in evidence as a copy of the Stock List transmitted on that day to Philadelphia.

mount of $1,629,436 12* instead of $645,400, which the list of the same date transmitted to Philadelphia, represented as the whole amount of their stock loans.

It would also be remarked, he said, that by a comparison of these two papers, all the notes stated in the list transmitted to Philadelphia, to have been discounted for these parties on pledges of Stock, appear to be fictitious, except the one for $97,875, which alone was found in both lists, and in the books. The "*Credit Book*" or Discount Ledger, containing an account of all notes discounted in the Branch, whether on pledges of stock or personal security, was then inspected; and no trace was found in it of any such notes, as those of $137,500, $221,875 or $188,150. Mr. White the cashier was also examined in relation to these notes, and proved that none such were delivered to him by James W. M'Culloh, on his coming into office.

The Attorney General then offered in evidence another paper signed by James W. M'Culloh as Cashier, and bearing date on the 8th of March, 1819. It purported to be a list of Bills and notes discounted on personal security alone, and on hand that day.—His signature to it was admitted, and it was proved to have been transmitted to the Parent board, about the time of its date.

This paper is commonly called a "pay list," in reference to the nature of the loans of which it contains an account, and which are

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* It will be remarked that this sum of $1,629,436 12 exceeds by $87,300 the sum of $1,542,136 12 which these parties had represented as the amount of their stock debt, and which was the amount of the notes delivered by James W. M'Culloh to John White the new cashier, as their stock notes.—This difference was produced by their omission of five notes, which really stood on the books as notes discounted on stock, for James W. M'Culloh or S. Smith & Buchanan,

to that amount viz. one of 11,000 } for James W. M'Culloh
" " 3,800 }
" " 17,500 }
" " 35,000 } for S. Smith & Buchanan
and " " 20,000 }

87,300
add 1,542,136 12 stock notes delivered to White

Total $1,629,436 12 real Stock list of March 8th, 1819.

Probably these five notes were omitted, because they were not considered by the parties as making part of their joint debt. One of them, that of $35,000 appears as part of the seperate debt of S. Smith & Buchanan.—The others do not appear in the lists of seperate debts, and have not been traced

expected to be paid at stated periods, as the notes become due—It is too voluminous for insertion, nor is its insertion necessary: for its whole importance depended upon its total amount, and on three notes with which it concludes. Its total amount, representing the sum total of loans then existing on personal security merely, as contradistinguished from loans secured or said to be secured by pledges of stock, or stock loans, was $4,259,959 87: which it stated to be the amount of the "Ledger Balance."

The three large notes with which it concluded were thus represented on its face.

1.	Drawn by George Williams and discounted for S. Smith & Buchanan, - - - - -	$251,250 00
1.	Drawn by George Williams and S. Smith and Buchanan, endorsed by James W. M'Culloh, Cashier, and discounted for S. Smith and Buchanan, - - - - - - -	325,000 00
1.	Drawn by the same persons, endorsed by James W. M'Culloh, Cashier, and discounted for S. Smith & Buchanan, - - - - -	318,350 00
	Making a total of - - - - - -	$894,600 00
	Which being added to the amount of the four notes on the stock list sent to Philadelphia, - -	645,400 00
	Made up the aggregate amount of	$1,540,000 00

The Attorney General stated, that he would now offer evidence to prove, that those notes were entirely fictitious. It would be remarked that being placed on the "Pay List," or list of notes discounted not on pledges of stock, but on personal security, they were necessarily represented to the Parent Board, by this act, as notes which had been regularly laid before the Branch Board, and discounted by them in the usual way.

He would offer proof that no such notes had ever been laid before that board, and that no trace of them appeared in the books; where if thus discounted they must have been regularly entered. The "Credit Book," or Discount Ledger was then produced, and Andrew B. Bankson the discount clerk was called and examined. He proved that the "Pay List" of March 8th 1819, was in the hand writing of J. L. La Reintrie: That such lists are usually made out from the "Credit Book;" but would be framed accord

ing to the cashier's direction: That no such note as any of these three appeared in the "Credit Book" as having been discounted on personal security: That he had made out lists of this kind, and always made them from the "Credit Book:" That such lists were not made by him in Mr. M'Culloh's time, but he has seen the clerks then employed in making them: That he thinks but one "Pay List" was made out for the Parent Bank, during Mr. M'Culloh's time; but that since Mr. White came into office, Pay Lists were made out quarterly for that bank, and were prepared by the discount clerk: And that the Stock lists were prepared by the book keeper.

On his cross examination he stated, that the offering book for discounts on personal security, or bills receivable, was kept by him, and the credit book and the offering book for discounts on stock, by Mr. Hughes the other discount clerk.

The "Credit Book," or discount ledger was then examined for one year next preceding the 8th of March 1819, the date of this pay list, and was found to contain no trace or mention whatever, of either of the notes for $251,250, or $318,350, stated in the pay list to have been discounted on personal security, by the Branch Board. Nor was there any trace found of any note for $325,000, having been discounted on personal security. A note of that amount did appear to have been discounted for S. Smith & Buchanan, as a stock note in the manner already explained, and it made part of the great stock debt of $1,542,136 12. But on this pay list it was represented as a note discounted by the directors, on personal security, in the usual and regular manner.

Mr. Bankson the witness being further examined proved, that when notes are offered for discount on personal security, they are lodged with the discount clerk, and entered by him in the offering book: That they are then laid with the offering book on the table of the directors; by whom their acceptance if accepted is noted in the offering book; after which the notes and offering book are returned to the discount clerk, who endorses and files the notes, and computes the discount on each: That the offering book is then handed to the book keepers, who enter the proceeds of the notes to the credit of the persons respectively, for whom they have been discounted.

John M'Kim, Jr. one of the directors of the Baltimore Branch was then examined as to these three large notes, of $251,250, $325,000 and 318,000. He proved that he became a director of

the Branch Bank on its first organization in 1816, and continued so till March 1819, when he was appointed a director of the Parent Bank: That none of these three notes to the best of his recollection were ever seen by him: And that he thinks they must have attracted his attention if seen.

Thomas Finley was also examined on the same subject. He proved that he was a director of the Baltimore Branch, from December 1816 to May or June 1819; and that he never to the best of his recollection saw any of these notes; which must he thinks have attracted his attention, had he seen them. That he had an indistinct recollection of a large accommodation to George Williams.

John White was also called on this point. He proved that he was a director of the Baltimore Branch, from Nov. 27th 1817, to June — 1819, and that he never to the best of his recollection and belief saw any of these notes; which he thinks it probable he should recollect if he had seen them: That he attended pretty regularly but took no very particular interest in the business of the board: But that having since he came into the office as cashier of the Baltimore Branch, made a careful examination in the bank, he can confidently say that no such notes as those of $251,250, or $318,350, were there when he took possession of the office.

James Beatty another of the directors was then examined. He proved that he became a director on the 27th November 1817, and continued till Nov. 27th 1820, during which period he was absent but three times from the meetings of the board: That he has not the least recollection of any such notes as these having been offered for discount: And that he thinks he should recollect them had he ever seen them.

The last of the directors examined on this point was Roswell L. Colt. He proved that he was a director of the Baltimore Branch, from Nov. 27th 1816 to Nov. 27th 1819; and that he has no recollection of any such discount having been granted, which he is confident he should have recollected had any such *taken place when* he was present, or within his knowledge: That he was sometimes absent several weeks in succession; particularly in December, 1818 and January, 1819.

Being asked by one of the counsel for the Traversers, whether a committee of the board was not authorized to grant discounts, he answered that no committee had any such power

Evidence was then adduced by the Attorney General, to prove that this pay list, containing these three large notes, two of which were entirely fictitious, and the other untruely represented as a note discounted regularly by the directors, on personal security, was the joint act of James A. Buchanan the President of the Branch at the time when it was returned, and of James W. M'Culloh the Cashier; and consequently furnished direct and positive proof of a combination or conspiracy between them.

The first witness called for this purpose was Roswell L. Colt; who proved that being present at a meeting of the board, about the 8th of March, 1819, he saw in the hands of James A. Buchanan, the President, a paper purporting to be a pay list; which was not laid before the board, or submitted to its inspection: That glancing his eye over the last page, he remarked these three large notes, which attracted his particular notice by their magnitude, and because he had never heard of any such notes having been discounted by the board: That he then asked for the paper, with a view of examining it more particularly; but instead of being given to him, it was delivered by the President to Lemuel Taylor one of the directors; immediately after which the board separated, and he saw no more of the pay list at that time: That he mentioned what he had seen to John M'Kim, jr. a Director of the Parent Board, who was soon to go to Philadelphia, and requested him to examine the pay list there, and on his return to inform him, the witness, what it contained: And that not long afterwards he, the witness, went himself to Philadelphia, where he inspected the pay list from the Baltimore Branch, which he found to agree in date and appearance with that now in evidence and believes to be the same. It contained the three large notes in question. He also believes it to be the same paper which he saw in the hands of James A. Buchanan, at the board in Baltimore.

John M'Kim, jr. was then called again and examined on this point. He proved that he saw a pay list in Baltimore, about the 9th of March, 1819, shortly before he went to Philadelphia. That it was shewn to him and George Hoffman, then a Director of the Parent Bank, by James W. M'Culloh: That he saw in it these three large notes, which he had never seen before the Branch Board, and being surprised to find them there, he took a memorandum of them: That he understood that this pay list was to be sent to the Parent Bank; where he afterwards saw a pay list similar to it, which was carried up by M'Culloh, and which he believes to be the

same: That James A. Buchanan and George Williams went to Philadelphia with M'Culloh, to attend the Parent Board, when the pay list was carried up: That he believes the pay list which he saw there, before the board, to be the same now in evidence: And that he pointed out to the Parent Board these three notes, as notes which to the best of his knowledge and belief had never been before the Branch Board. This was in April, 1819, when he had become a Director of the Parent Bank.

John Oliver was then called and examined. He proved that being a director of the Parent Bank, he was in Philadelphia attending the Board, before the final settlement with the Traversers in May. He thinks it was in April. That John M'Kim, jun. was there at the same time; and stated to the Parent Board that the pay list from the Baltimore Branch contained several notes which had not, as he believed, been discounted by the Baltimore Board, and which he pointed out; but the witness did not recollect the particular description of the notes: That George Hoffman also pointed them out at the same time to the Parent Board, of which he was a member: and that R. S. Colt arrived in Philadelphia about the same time.

In answer to a question by the counsel for the Traversers, he stated that the directors of the Branch Bank have access to the Letter Book.

George Hoffman was then examined. He proved that he became a director of the Parent Bank in January, 1819: That he went to Philadelphia in April, 1819, to attend a meeting of the Board of Directors; and that before he went up, he and John M'Kim, jun. saw at the house of James W. M'Culloh, and in his possession, the pay list prepared, as they understood, for the Parent Board: That having heard it mentioned, he had called on M'Culloh for a sight of it, with Mr. M'Kim; and when they received the list, took it down to the Bank to examine it: That having done so, they returned it to M'Culloh, who had informed them that he was going with it to Philadelphia, and wished to get it back from them, as soon as they could conveniently return it. That it contained the three large notes in question, and he believes it to be the same paper now in evidence; and that he afterwards saw it before the Parent Board in Philadelphia, where he pointed out these three notes among

others, and informed that Board that they had not, as he believed, ever been before the Branch Board in Baltimore.*

The minute book of the Parent Bank was then produced and proved. From this it appeared that John M'Kim, jun. John Oliver, and George Hoffman, attended the meeting of the Parent Board, on the 12th of April, 1819.

John Hoffman was also examined as to this point, and proved that he came into the Baltimore Branch as a director, in December, 1818: That the Board frequently expressed a wish to have a pay list, not only in obedience to the order of the Parent Board, but for its own information: That such a list was often promised by the officers: and at length some time in March, 1819, the president, James A. Buchanan, appeared at the Board with a pay list in his hand, or a paper said by him to be one, which the witness did not read, but he believes from his recollection of its appearance to be the same now in evidence.*

The Attorney General then turned to the minute book of the Parent Board, and read from it the following minute, under the date of March 16, 1819.

"*Extract from Minutes, March* 16, 1819.

"The Cashier laid before the Board the pay lists required by resolutions of this Board from the offices of Baltimore and Pittsburgh.

"The President stated to the Board, that the President and Cashier of the office at Baltimore were now in this city, and wished to make certain explanations relative to some of the items in the pay list of that office. Permission being granted, Messrs. J. A. Buchanan, president, and J. W. M'Culloh, cashier of the office at Baltimore, gave verbal explanations, and the subject was referred to a committee consisting of Messrs. Connelly, Chauncey, Calhoun, Lippincott, and Sergeant."

General Harper, on the part of the prosecution, then produced and offered in evidence a paper in the hand writing of James W. M'Culloh, without date, and purporting to be a statement of the loans obtained jointly by him James A. Buchanan and George Williams, on the security of stock. It would be recollected, he said,

* Mr. Hoffman was examined in a subsequent stage of the case, having been prevented by indisposition from attending at first. His testimony on this head is introduced here for the sake of method and connexion.

* This witness also was examined in a subsequent stage of the trial, in the early part of which he did not attend.

that by the stock *list* of March 8th, 1819, transmitted by these persons to the Parent Bank, they had represented themselves as borrowers on stock to no greater amount than $645,400, exclusive of the loan of $3,400 obtained by James W. M'Culloh on his separate account; and that in the pay list of the same date, they had represented the residue of their debt, to the amount of $891,600, as having arisen from discounts regularly obtained on personal security. This paper *x* would prove, by their own admission, that the whole debt, including both sums, arose from loans obtained by them on supposed pledges of stock; and consequently, that both statements were false and deceptious. It would also disclose many other facts, on which reliance would be placed in the progress of the case. He then called a witness to prove that the paper was in the handwriting of James W. M'Culloh, and had been presented by him and his associates, James A. Buchanan and George Williams, to the committee of the Parent Bank, appointed to make an arrangement with them, on the subject of their debts to the Bank. Its date, he said, he should attempt afterwards to establish. General Winder, on the part of the Traversers, admitted the paper to be in the handwriting of M'Culloh; and that it was delivered to the Parent Bank, by all the parties, on the 16th of March, 1819, when the stock and pay lists of March 8th, 1819, were presented.

General Harper replied, that he would accept the admission as to the handwriting, which he was prepared to prove; but not as to the time when, or the persons to whom it was presented. He should endeavour to shew, that it was presented after the 16th of March, and not on that day, and to the committee of the Parent Board then appointed, and not to the Board itself. He then gave the paper in evidence, and read it to the court, as follows:

X.

We own 47,398 shares of United States Bank Stock, and we have borrowed of the Bank United States and this office, on this account, $3,497,700, *viz:*

At the Bank United States, par on 18,290 shares hypothecated in Bank, - - - -	$1,826,100	00
25 advance on 5,264 thereof, - - -	131,600	00
	1,957,700	00

At office Disc. and Dep. 25 adv. on 13,026 shares		$ 325,650 00
		2,283,350 00
Par on 2,558 shares in the office,	$255,800 00	
25 adv. on 2,558 do.	63,950 00	
		319,750 00
25 adv. on 13,000 shares placed at par in London, Liverpool, Boston and New-York, -		325,000 00
25 adv. on 10,050 shares placed in N. York and Liverpool, at par, - - - - -		251,250 00
		$3,179,350 00
And we have 3,500 shares placed in Liverpool at $125.		
Upon 47,398 shares, we have borrowed at the office above the $125, to secure it from loss when stock was at $150 per share, -		318,350 00
		$3,497,700 00

RECAPITULATION.

10,400 at New-York and Liverpool, at par.
11,500 at London and Liverpool, do.
1,150 at Boston.

23,050 out of Bank, at par.
18,290 in Bank.
2,558 in Office—20,840 in Bank.
3,500 at Liverpool, at $125.

47,398 shares.

General Harper then called the attention of the court to the extract from the minutes of the Parent Board of the 16th March 1319, and remarked that the minute on this subject, only spoke of "verbal explanations," as having been given to the board on that day, by James A. Buchanan and James W. M'Culloh; an expression which could not with propriety have been used, had so important a "written explanation" as the paper x contained, been then presented. He also adverted to the absolute silence of

the minutes, as to any "written explanation," or any written communication whatever, except the stock and pay lists of March 8th 1819; and said that he should rely on these circumstances among others, as proof that the paper x was not presented at that time, nor to the Parent Board.

He also produced from the same minute book, and read in evidence, the report of the committee mentioned in the minute of March 16th 1819, to shew that it was founded on the statements contained in the paper x; from which he should infer and contend, that this paper was produced by the Traversers to the Committee of the Parent Board, and not to the Board itself, and was formed for the express purpose of being so produced, after the Traversers had discovered by their conferences with the Committee, that the stock and pay lists must be abandoned, and the truth confessed.

This Report is as follows:

"*At a meeting of the President and Directors of the Bank of the United States, 30th March*, 1819.

"The Committee appointed for the purpose made the following report, viz:

The Committee to whom was referred the subject of the debt due by Messrs S. Smith & Buchanan, George Williams and James W. M'Culloh,

Report, That the gentlemen are indebted to this institution on stock notes, which have been discounted at this bank and the branch at Baltimore, to the amount of $3,497,700. That there are, for the security of this sum, only 20,845 shares of the bank of the United States pledged directly to this institution. That these gentlemen are represented to be owners, and as your Committee believe, are the owners of 26,550 other shares, which it is understood are pledged in London, Liverpool, New York and Boston, to secure the payment of sums considerably exceeding the par value thereof, and that, subject to the satisfaction of these sums, they are pledged at the Office at Baltimore, as a security for portions of the sum due to this institution, as above mentioned. That these several pledges, and the personal liability of these gentlemen, are the only securities which the bank has for the debt due it. That these gentlemen are debtors to the branch at Baltimore on their personal liability, viz: Messrs. S. Smith & Buchanan, as payers, for $167,000, and Mr. George Williams for the sum of $189,000.—

That in the communications between the committee and the gentlemen, they have desired to obtain an extensive indulgence in the payment of their debt, which the committee have been willing to recommend to the board, provided adequate security should be given. That the result of many conferences and a good deal of deliberation, has been an offer on the part of the gentlemen to give the following security:—the 20,818 shares of the Bank of the United States, directly pledged to the Bank, shall be estimated as an acceptable security, together with their joint personal responsibility, for $2,597,700, which is to estimate these shares at about $125 per share. That the shares not pledged to the bank in the first instance, shall be liberated from the pledge to the bank, and that these gentlemen shall each secure to the bank, being separately and not jointly liable, the sum of $300,000, making together $900,000, and with the sum to be secured by the 20,818 shares pledged in the first instance to the bank, making the sum due by them on stock notes, viz: $3,497,700 That Messrs. S. Smith & Buchanan offer as their security John Donnell, Esq. of Baltimore for the sum of $300,000. That Mr. Williams offers Lemuel Taylor, Esq. of Baltimore for $100,000, Real Estate in the state of Maryland said to be worth $100,000, and Mr. A. A. Williams and Mr. C. D. Williams, his brothers, or one of them, being uncertain whether he can get both to become his securities, for the sum of $100,000. That Mr. M'Culloh has offered sixteen gentlemen of Baltimore, who are to become bound, each separately, for $12,500, and Real estate in Maryland estimated by him to be worth $60,000; and prays that for the remaining $40,000 his own note with Messrs. S. Smith & Buchanan and Mr. Williams may be accepted. The Committee report herewith, as explanatory of the offers of Messrs. Williams & M'Culloh, a letter from Mr. Lemuel Taylor to Mr. Williams, and a letter from Mr. M'Culloh addressed to Messrs. S. Smith & Buchanan. The indulgence required is as follows: One fifth payable on or before the day of July 1820, and four fifths in two, three, four and five years, from the first day of April next, in equal payments. That in the opinion of the Committee, (the reasons for which it is unnecessary to assign in this Report) the indulgence desired by these gentlemen ought to be granted. That the 20,818 shares of the Bank of the United States, pledged in the first instance to the Bank, ought to be accepted as a security together with the joint personal responsibilities of the parties, for the sum of $2,597,700. Provided they shall give undoubted security each for the sum of $300,000 so as effectually

to secure the balance of $900,000. That, in their opinion Mr. Donnell ought to be accepted as the security of Messrs. S. Smith & Buchanan—But that they are unable to form any opinion of the security offered by Messrs. Williams and M'Culloh. They therefore are of opinion that the subject of the sufficiency of the security offered by the later gentlemen, should be referred to the members of this Board residing in Baltimore, viz. Messrs. Oliver, M'Kim and Hoffman, to enquire and report to this Board. And the committee think that the unanimous opinion of these gentlemen should be required on the point to satisfy the Board. The Committee feel it a duty to remark, which they do with no intention to suggest doubts of the sufficiency of the gentlemen, that Mr. A. A. Williams is liable as a payer in the Branch at Baltimore, in the sum of $104,174 53, and as endorser for the sum of $70,500, and Mr. C. D. Williams, as a payer, in the sum of $1,317 50 and an endorser in the sum of $56,932 78.

And, finally, the Committee recommend the adoption of the following *Resolves:*

1st. That in the opinion of the Board, the offer of Messrs. S. Smith & Buchanan, George Williams and J. W. M'Culloh, be accepted, and the indulgence they require granted, provided the security for the sum of $900,000 be rendered undoubted.

2nd, That the subject of the sufficiency of the security offered by Messrs. Williams and M'Culloh, be referred to Messrs. Oliver, M'Kim and Hoffman, and that they report thereon to this Board.

3rd, That Messrs. Williams and M'Culloh be requested to furnish to this Board, an accurate schedule or description of the real estate, which they propose to mortgage.

4th, That if Mr. M'Culloh secure, in a satisfactory manner, the sum of $260,000, the joint responsibility of himself and Messrs. S. Smith & Buchanan and Mr. Williams be accepted as a security for the remaining $40,000.

It is understood that the sum due to the Bank shall continue to have the form of bank transaction by promissory notes, and be renewed and the interest paid every sixty days, and that the security to be given shall stand and remain as a security for the full and final payment of the debt, according to the terms of this agreement, and of the interest as it shall become due on the several renewals.

It is also understood, that if the stock pledges should rise at any time to $125 per. share, the Bank shall be at liberty to sell the whole or any part thereof.

"On motion the consideration of the first and fourth Resolutions recommended in the foregoing Report, was postponed, and the second and third Resolutions adopted."

The counsel then remarked, that according to this statement, at the Traversers held in March, 1819, 47,398 shares of the stock of the Bank of the United States, on which they borrowed from the Parent Bank and the office at Baltimore, $3,497,700. He should endeavor, he said, to shew the average price at which they had bought these shares; from which if it should turn out to be what he supposed it was, some very important inferences, in relation to this case, would be drawn. For this purpose he called and examined Dennis A. Smith, who proved that he sold to the Traversers, in the months of April, June and December, 1817, three parcels of stock, to the amount in the whole of 31,940 at different prices, the average of which was $137 per share, or 37 per cent above par; but he did not know for what number of shares they originally subscribed, nor the prices at which they purchased the rest of their stock: consequently the attempt to prove the average cost of all their stock failed.*

Roswell L. Colt was then called again, and examined on the part of the state, as to the prices of the stock of the Bank of the United States, during the period through which this operation under the name of stock loans extended. He proved that from the 1st of April 1817, to the 7th of June 1819 inclusive, he was very frequently, indeed almost daily, engaged in purchases and sales of bank stock, of which he kept an exact and regular account. From this account he gave the following statement, of the prices of stock either bought or sold by him, with the days on which the purchases and sales took place.†

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* It is proper to add, that James W. M'Culloh, afterwards and during the trial, made out a statement, from such documents as he stated then to be in his power. It shewed that the average cost of the whole mass of their stock was considerably higher than had been supposed by the counsel for the prosecution. To this was to be added a large sum, for commissions and other expenses. This statement was put into the hands of the counsel for the prosecution, to be used if they thought proper; but they did not use it, or press this part of the case any further.

† This testimony and all that follows was introduced in a subsequent stage of the trial. It is reported here to preserve the connexion.

April	1	1817	Price 118 per cent 6 months credit.
	11		117½
	14		120 13 do
	1		117½
May	12		125 dividends to me, 12 months credit
	18		127½
	28		129½
			130
			130
	29		140 deliverable 1st Sept. and div. to me
			136
			138 do 1st Oct. do
	31		130½
June	9		131
	12		131¼
	23		140 deliverable 10th Jan. dividend to me
July	10		140½
Sept.	1		137
	24		147¼
	30		151
Oct.	4		150
	6		156 payable 4th May 1816
	18		154 (90 days)
	16		155 5/100 60 days
	16		150 5/100
	21		150½
	21		148½
	21		153 5/100
Nov.	4		150
	28		156 4/100 90 days
Dec.	1		150
	30		157 5/100 75 days
Jan.	1	1818	146 per cent
	10		150
	14		152
	20		150
	29		149
March	11		145
April	1		145a147
	3		143¼
	9		143

April	15	1818,	Price 112	per cent
	21		140	
	23		137	
May	1		140½	
	4		137	
	8		139	
June	1		141	
	8		141	
	10		141	
	16		144	
July	1		136	
	27		131	
	29		130¾	
	31		130	
Aug.	3		135	on time
	8		127¼	
	12		130½	on time
	14		130	do
	17		128¾	
	22		128¼	
	31		126¼	
Sept.	24		128	
	29		129	
Oct.	14		126	
	15		125	
	21		114¾	
	24		114	
Nov.	9		112	
	13		112a115	
	27		114	
	30		113a113½	
Dec.	10		110	per cent
	21		113	
	26		110	
Jan.	7	1819	110	
	11		107	
Feb.	1		100	
	3		100	
	16		103½	
	18		105	
	25		105	

March	1	1819, Price	111 per cent
	8		111
	25		112
	27		115
April	1		100
	21		102½
	28		103½
May	3		103
	6		101½
	10		102½
	19		102
June	7		92½

True copy from Mr. Colt's statement.

T. B. RUTTER.

"*April* 1, 1823.

General Harper then adduced evidence to prove, that a very large part of the debt thus contracted by the Traversers, under colour of loans upon pledges of stock, had been totally lost by the Bank of the United States.

For this purpose he produced and read in evidence, from the minute book of the Parent Bank, a report made to it on the 10th of April, 1819, by a committee consisting of the members residing in Baltimore. It is as follows:

April 10, 1819.

"The committee appointed to ascertain the sufficiency of the security offered to this Bank by Messrs. George Williams and James W. M'Culloh, made the following Report, viz:

"Report of the members of this Board, resident in Baltimore, to whom has been referred the sufficiency of the security tendered to the Bank by Mr. George Williams and Mr. James W. M'Culloh.

"This committee having received a copy of a report and resolution offered for consideration and adoption by the Bank, by a committee appointed in the case, as also a letter from the president of the Bank, containing explanations and information on the same, proceeded to the attainment of the object committed to their judgment and care; after various communications, both written and verbal, with the parties, they report the following arrangements:

"Mr. George Williams handed a list of real property, &c. amounting, as per estimate, to the sum of $105,832, intended to secure the sum of $100,000. The committee considering it placed

or rated as insecure, from the fluctuations of the market price, agreed to receive it at a valuation of $75,000; the difference between which, and the sum intended to be secured in this manner, viz. $25,000, Mr. Williams has engaged to pass his note to the Bank, endorsed by Messrs. S. Smith & Buchanan, which has been approved of by the committee.

"In the second item of Mr. Williams's proposition, for the security of another $100,000 by the endorsement of Mr. Amos A. Williams The committee having taken into view the magnitude of the amount, and the length of its duration, requested additional endorsers for the one half of the said sum; Mr. George Williams has engaged to pass his notes, endorsed by Mr. Amos A. Williams, for $50,000, and also his notes endorsed by Mr. Amos A. Williams and Messrs. S. Smith & Buchanan, for the other amount of $50,000. Under this arrangement we approve of this security.

"On the other proposal of Mr. George Williams for the securement of the remaining $100,000, by the endorsement of Mr. Lemuel Taylor, the committee are constrained to say they could not concur in the acceptance of this security to such extent; for, although Mr. Taylor is at present in good credit, and is possessed of considerable property, yet we also perceive that he is already bound by other personal security to the bank to a large amount, being also extensively concerned in commercial transactions, is now more than usually exposed to the vicissitudes attendant on the same. Mr. Taylor's letter to Mr. George Williams on the subject of this security, as also in a communication to this committee, proposes to place at the control of the Bank 3,000 shares of the stock of this Bank (including about 1400 shares already with it) with permission to draw an amount of $85 per share on the entire of the said 3,000 shares, and will pledge their value, above the sum of $85 per share, to the Bank, as an additional or collateral security, for the faithful payment of the said sum of $100,000 thus to be endorsed by him; this would be an additional security at the present, or at the par value of the stock, of about one half the sum of his security. Your committee cannot therefore but advise, that this proposal should be accepted, on the principle of its being more than usual security, although it should be at some inconvenience at present to the Bank, in advancing the sum implicated.

"Mr. James W. M'Culloh proposed to the committee to mortgage three farms he possesses in Maryland, to secure the amount of $60,000. The committee considering them as not sufficiently va-

luable to secure with certainty that sum, have agreed to place them at a valuation of $40,000, and Mr. M'Culloh has engaged to pass his notes, endorsed by Messrs. S. Smith & Buchanan and George Williams, for the remaining amount, making together, (with the former sum offered) the amount of $60,000. Of the sixteen names suggested by Mr. M'Culloh, each for the sum of $12,500, to secure an amount of $200,000, three of those names have been withdrawn, and three others have been objected to by the committee. Mr. M'Culloh has therefore engaged to place the endorsements of Messrs. S. Smith & Buchanan, and George Williams, on the notes of those three objected to, and to give his note, with those same endorsers, for the three which have been withdrawn, and having also declared and pledged himself to the committee, that he considers himself bound to give other security to the Bank, in case any of those persons bound for him should, from casualty or misfortune, become unable to pay, at any time before the whole debt is liquidated, but which is not expected. Your committee are satisfied, on the whole, that the security offered by Mr. James W. M'Culloh should be accepted, and accordingly recommend the same

"It is but justice to state, that a good disposition was manifested from all the parties, to meet the objects of the committee, as far as practicable.

"Annexed is a list of the names* as securities for Mr. M'Culloh, each in the sum of $12,500, thirteen in number; and accompanying this Report is a schedule of the real property, &c. to be mortgaged by the parties; also two letters, relative to the contents of this Report.

"Signed, JOHN OLIVER,
JOHN M'KIM, Jun.
GEORGE HOFFMAN.

"The foregoing report, with the documents accompanying the same, was referred to the committee appointed on the same subject, on the 16th ultimo."

The next evidence produced and relied on by the counsel for this purpose, consisted in sundry proceedings of the Parent Board, on April 12th, 1819, in reports made to it on the 14th and 17th of

* Henry Payson, Isaac Edmonson, Solomon Etting, A. J. Schwartze, Isaac Phillips, Christopher Deshon, Jeremiah Sullivan, Thomas Marean, Henry Didier, John F. Poor, Thomas Sheppard, Thomas Finley, N. F. Williams. The three latter endorsed S. S. & B. and G. W.

May in the same year; in certain proceedings of the Board, on the 18th of the last mentioned month; and in a report made to it and adopted by it on the 5th of October in the same year; all of which were read from the original minute book of the Parent Bank, and are as follows:

"*April* 12, 1819.

The committee appointed on the 16th ultimo, to whom was referred the Report of the committee appointed on the sufficiency of the security offered to this Bank by George Williams and James W. M'Culloh, with the documents accompanying the same, recommended the adoption of the said Report, which was, on motion, agreed to unanimously.

On motion, the Board resumed the consideration of the *first* and *fourth* resolutions contained in the Report of a committee made on the 30th ultimo, and adopted the same unanimously, viz:

1st. That, in the opinion of the Board, the offer of Messrs. S. Smith & Buchanan, George Williams, and James W. M'Culloh, be accepted, and the indulgence they require granted, provided the security for the sum of $900,000 be rendered undoubted.

4th. That, if Mr. M'Culloh secure in a satisfactory manner, the sum of $260,000, the joint responsibility of himself and Messrs. S. Smith & Buchanan, and Mr. Williams, be accepted as a security for the remaining $10,000.

On motion,

Resolved, That the Report of the Committee made on the 30th ultimo, together with the Report of the Committee on the security offered by Messrs. Williams and M'Culloh, be referred to Messrs. Oliver, M'Kim, and Hoffman, to prepare, with the aid of counsel, the necessary papers to carry into effect the arrangements with Messrs. S. Smith & Buchanan, George Williams, and James W. M'Culloh, to be submitted to this Board for its approbation, previous to their being executed. And it was further

Resolved, That the lien to be taken on the real estate of Geo. Williams and J. W. M'Culloh, be in such form as the said committee shall, under advice of counsel, deem most advantageous to the interests of the Bank.

"14*th May*, 1819.

The committee of the members of the board from Baltimore, who were charged with completing the arrangement with Messrs.

S. Smith & Buchanan, George Williams and James W. M'Culloh, reported sundry documents, which were referred to the committee appointed on the subject, to report at the next meeting of the board.

"17*th May*, 1819.

The committee on the debt due by S. Smith & Buchanan, Geo. Williams and James W. M'Culloh, made the following report, which was read and adopted:

The committee to whom were referred the documents and securities which were reported to the board by the committee of the board residing in Baltimore, to whom had been referred the execution of the arrangement, formerly reported by this committee, between Messrs. S. Smith & Buchanan, George Williams and Jas. W. M'Culloh,

REPORT:

That for the purpose of securing the sum of $300,000 part of the debt due by Messrs. S. Smith & Buchanan, George Williams and James W. M'Culloh, there are the following documents and securities, viz:—

I. To secure $300,000, which, according to the arrangement which was to be executed, were to be secured by Messrs. S. Smith & Buchanan, there are four promissory notes dated 11th May, 1819 drawn by Messrs. S. Smith & Buchanan, payable to Messrs. John Donnell, William Patterson and John Spear Smith, each for the sum of $60,000, endorsed by the payers, and payable one on the 1st of April, 1821, one on the 1st of April, 1822, one on the 1st of April, 1823, and one on the 1st of April, 1824, making together - - - - - $240,000

And S. Smith and Buchanan's promissory note, endorsed by Lemuel Taylor, dated 11th of May, 1819, at 30 days for - - - - - - 60,000

300,000

II. To secure the like sum, which was to be secured by Mr. George Williams, there are

I. Five promissory notes drawn by George Williams and endorsed by Lemuel Taylor, each for the sum of $20,000, dated 8th of May, 1819, and payable, one of them; on each of the following days, viz:— 20th of July, 1820—1st of April 1821, 1822, 1823, and 1824, - - - - - - - - - $100,000

II. Five promissory notes drawn by G. Williams and endorsed by Amos A Williams, each for the sum of

$10,000, and payable, one of them on each of the following days: 20th July 1820, 1st April 1821, 1822, 1823 and 1824, dated each 8th May 1819, - $50,000

III. Five promissory notes drawn by G. Williams and endorsed by S. Smith & Buchanan, each for $10,000, and payable, one of them, on each of the following days, 20th July 1820, 1st April 1821, 1822, 1823 and 1824, dated each 8th May 1819, - - - $50,000

IV. Five promissory notes drawn by G. Williams in favor of the Bank of the United States, each for the sum of $15,000, dated 8th May 1819, and payable one of them on each of the following days, 20th July 1820, 1st April 1821, 1822, 1823, and 1824 $75,000

Five promissory notes drawn by G. Williams, in favor of S. Smith & Buchanan, and by them endorsed, each for the sum of $5,000, dated 8th May 1819, and payable, one of them on each of the following days, 20th July 1820, 1st April 1821, 1822, 1823 and 1824 - - - - - - 25,000

100,000

$300,000

The last or 4th Class of promissory notes given by G. Williams, amounting to $100,000, are secured by a mortgage of real estate, valued by the committee residing at Baltimore at $65,000; also of 230 shares of the capital or joint stock of the Franklin Manufacturing Company of Maryland, and 112 shares of the capital or joint stock of the Union Manufacturing Company of Maryland. This real estate and other property so mortgaged, according to the terms of the mortgage, are made liable, first for the payment of the notes payable to the Bank of the United States, amounting to $75,000, and afterwards, for the payment of those endorsed by Messrs. S. Smith & Buchanan, amounting to $25,000.

The additional security on the notes endorsed by Lemuel Taylor, by a pledge of shares of the stock of the Bank of the United States to the number of 3,000, on an advance at the rate of 85 dis. per share, has not been obtained, except so far as the agreement contained in his letters, which have been referred to in former reports on this subject, shall be binding on him, and except so far as the 1,400 shares already pledged to the bank, which were to

form part of the number of 3,000 shares, which were said to be pledged at $95 per share, and on which some payments may have been subsequently made, may be subject to that agreement.

3rd. To secure the sum of $500,000, which were to be secured by James W. M'Culloh, there are

I. Five promissory notes drawn by J. W. M'Culloh, payable to the Bank of the United States, each for the sum of $8,000, dated 12th May 1819, and payable, one of them, on each of the following days, 20th July 1820, 1st April 1821, 1822, 1823 and 1824, *$40,000

II. Five promissory notes of J. W. M'Culloh, payable to George Williams and endorsed by him and S. Smith & Buchanan, each for the sum of $11,000, dated 11th May 1819, and payable one of them on each of the following days, 20th July 1820, 1st April 1821, 1822, 1823 and 1024, - - - - - 55,000

III. Five like promissory notes, of the same sums dates and periods of payment, except that they are payable to S. Smith & Buchanan, and endorsed by them and George Williams - - - - - 55,000

IV. Five promissory notes drawn in favor of each of the following persons by James W. M'Culloh, and by them respectively endorsed, each for the sum of $2,500, dated 11th May 1819, and payable, one to each person, on each of the following days, 20th July 1820, 1st April 1821, 1822, 1823 and 1824, viz:

Solomon Etting,	five notes,	$2,500	$12,500
Henry Payson,	ditto	ditto	12,500
C. Deshon,	ditto	ditto	12,500
Isaac Phillips,	ditto	ditto	12,500
Henry Didier, Jr.	ditto	ditto	12,500
J. Sullivan,	ditto	ditto	12,500
Thos. Marean,	ditto	ditto	12,500
A. J. Schwartze,	ditto	ditto	12,500
Isaac Edmondson,	ditto	ditto	12,500
			112,500

* This sum is secured by a mortgage of Real Estate, valued at the same sum by the Committee of the Board resident at Baltimore.

V. Three like promissory notes of the same sums, dates and periods of payment, payable to the following persons and by them respectively endorsed, and also endorsed by G. Williams and S. Smith & Buchanan, viz:

Thomas Sheppard,	five notes,	$2,500	$12,500	
Thomas Finley,	ditto	ditto	12,500	
N. F. Williams,	ditto	ditto	12,500	
				37,500
				$300,000

which complete the documents and securities intended to secure the principal of the sum of $900,000 before mentioned.

Under these securities Messrs. S. Smith & Buchanan, George Williams and James W. M'Culloh are respectively liable as principals, severally and not jointly, for the sum of $300,000 But the debt is still to continue a bank debt, and be in form renewable every sixty days, (interest being paid at each renewal) until the payment of the said sum of $900,000 shall be completed, according to the tenor and effect of the promissory notes herein before stated, and the said parties are to be jointly liable for the interest; and the renewals are to made in the form of their several notes, payable to the bank. For this purpose the said S. Smith & Buchanan, George Williams and James W. M'Culloh have given their promissory notes, as follows, viz:

S. Smith & Buchanan to the President Directors and Company of the Bank of the United States, dated 11th May 1819, at 60 days, - - - - -	$300,000
George Williams, to the President Directors and Company of the Bank of the United States, dated 11th May 1819, at 60 days, - - - - - -	300,000
James W. M'Culloh, to the President Directors and Company of the Bank of the United States, dated 11th May 1819, at 60 days - - - -	300,000
	$900,000

And the said parties have executed their joint and several bond, in the penal sum of $300,000, conditioned for the punctual payment of the interest, on the renewals of the said notes.

The Committee have examined all these documents and securities, and, in their opinion, they are in correct form and regularly executed, with the following exceptions:

1st. The notes of George Williams payable to the Bank and to S. Smith & Buchanan, and secured by a mortgage are recited in the mortgage to be dated 11th May 1819, but are in fact dated 8th May 1819. This, the Committee is advised, is an immaterial mistake, and is only here recorded that it may serve as an explanation hereafter, should any be wanted.

2nd. The shares in the Franklin Manufacturing Company mortgaged by G. Williams, have not yet been transferred to the Bank, but the Committee of the Board residing in Baltimore have a joint and several power from G. Williams to transfer same.

The Committee further report, that in the general arrangement, it was contemplated to transfer so much of the debt which was the subject of the former reports by this Committee, as stood on the books of the Office at Baltimore, to the Bank: And the Committee beg leave now to state, that the said debt has heretofore stood as follows:

In the Bank at Philadelphia, on a pledge of eighteen thousand two hundred and ninety shares Stock of the Bank United States, - - - - -	$1,957,700
In the Office at Baltimore, - - - -	1,540,000
	$3,497,700

The Committee have examined the instruments and other acts by which the shares, pledged at the Bank in Philadelphia, are pledged, and find that there are 3,500 shares standing on the books of the bank, in the name of the Cashier of the bank, in trust to secure the loans which have been granted on them, and the certificates for the remaining 14,790 shares are in the the hands of the Cashier, with the customary powers to transfer 13,290 shares, part of the said 14,790 shares. But there is no power to transfer the remaining 500 shares. It is not known whether the power to transfer these 500 shares has been lost or mislaid, or whether there was an original omission to take the same. The Cashier states that the want of this power was heretofore mentioned to Mr. J. W. McCulloh in whose name they stand, who promised to execute a power, but had not done it.

The Committee residing at Baltimore have brought from the Office at that place, certificates of 2,558 shares of Bank United States Stock, supposed to have been pledged at that Office, with powers of transfer which are regular, except that the power from

S. Smith & Buchanan, which is a sealed instrument, is not executed by both the said parties, but only by J. A. Buchanan for them, when it is perhaps necessary it should be executed by both. This power is to transfer 783 shares standing in the name of S. Smith & Buchanan. The shares thus transmitted from the Office at Baltimore, added to those heretofore pledged at the bank in Philadelphia, make 20,848 shares, which, according to the arrangement before referred to, were to be pledged as a security at the rate of $125 per share. To carry this part of the arrangement into effect, among the papers referred to the Committee are the following notes:—

1st. The joint note of Geo. Williams, S. Smith & Buchanan and James W. M'Culloh, payable to the Bank, dated May 1819, and payable 60 days after date for	$325,650
2nd. Geo. Williams's note, date 11th May 1819, at 60 days, payable to S. Smith & Buchanan and endorsed by them and J. W. M'Culloh for - - - -	221,875
3rd. S. Smith & Buchanan's note, dated 11th May 1819 at 60 days, payable to George Williams and endorsed by him and J. W. M'Culloh, for - - - -	97,875
	645,400
To which add the amount of the notes discounted on stock at the Bank in Philadelphia -	1,957,700
Which makes	$2,603,100

Two millions six hundred and three thousand one hundred dollars, secured by the pledge of twenty thousand eight hundred and forty-eight shares, which is rather less than $125 per share.

RECAPITULATION.

The sum secured by a pledge of stock - -	$2,603,100
The sum secured by a mortgage of Real Estate, &c. and personal security, - - - - - -	900,000
	3,503,100
The sum to be secured, according to the statement of Messrs. S. Smith & Buchanan, George Williams and J. W. M'Culloh, handed to the Board at Philadelphia, is - - - - - - - - - -	3,497,700
The apparent excess is	$5,400

If this excess should be real, it will then be necessary, finally to complete this arrangement,

1. Either to correct the adjustment, by reducing one of the stock notes, or by giving the parties credit on some other account.
2. To state an interest account on the notes heretofore given at the Office at Baltimore, which are substituted by the three notes herein particularly described, as among the papers referred to this Committee, and to make the necessary transfer of the account from the Office at Baltimore to the Bank.
3. To obtain a transfer of the shares in the Franklin Manufacturing Company of Maryland.
4. To obtain a power from James W. M'Culloh, to transfer 500 shares of the stock of the Bank United States, pledged as aforesaid.
5. To perfect the power of S. Smith & Buchanan to transfer 753 shares stock Bank United States which is only executed by Mr. Buchanan.
6. The completion of Mr. Lemuel Taylor's agreement.
7. To have the mortgages recorded according to law.

In fine, the Committee are of opinion, that the duties committed to the gentlemen residing at Baltimore, have been executed with great labour and singular ability; and that the Bank is greatly indebted to them for their exertions.

The Committee recommend the following *Resolves:*

1. That it be the duty of the Cashier of the Bank to make an actual statement of the accounts, report the same to the Board, and to make the necessary transfers to remove the account to the books of the bank.
2. That the gentlemen of the Board, residing at Baltimore, be requested to obtain a transfer of the shares in the Franklin Manufacturing Company to the Bank, a power from Mr. James W. M'Culloh to transfer the 500 shares of the pledged stock for which no power exists, and to have the power of Messrs. S. Smith & Buchanan completed.
3. That the stock now pledged to the Bank by Mr. Lemuel Taylor, be held subject to the agreement contained in his letters, and that that agreement be completed from time to time, as he shall pledge portions of remaining stock, agreeably to the tenor of his letters: and
4. That when the powers of transfer of Messrs. S. Smith & Buch- and J. W. M'Culloh shall be completed, the foregoing execu-

tion of the arrangement between Messrs. S. Smith & Buchanan, Geo. Williams and J. W. M'Culloh be deemed satisfactory and be final."

"*May* 18, 1819.

On motion, *Ordered*, That so much of the resolution passed at the last meeting, as makes it the duty of the cashier to transfer the account of S. Smith & Buchanan, George Williams and James W. M'Culloh, from the office at Baltimore to the Bank, be suspended.

"*October* 5, 1819.

The following Report was read and adopted, viz:

The Committee on the Baltimore business, Report,

That by the report of this committee, made on the 17th May last, and on that day confirmed by the Board, it appeared that the aggregate sum to be settled by the arrangement narrated in that report, was $3,497,700. Of this sum that report states, that the notes discounted at Philadelphia, amounted to $1,957,700. These notes were not changed, and now remain at the Bank, protested for non-payment. The remainder of this sum was due at the office at Baltimore, viz. $1,540,000. To secure this last mentioned sum, notes were held by the office (previous to the arrangement narrated in the report of the 17th May last,) which still remain in the office at Baltimore, as this committee understands; and that, under the arrangement aforesaid, the following notes were given in lieu thereof, viz:

George Williams,	$300,000 and $221,875—$5.	1,875 00	
	4 days interest,	347 91	$522,222 91
S. Smith & Buchanan, George Williams, and James W. M'Culloh,	- - -	325,650 00	
	4 days interest,	217 10	325 867 10
S. Smith & Buch.	$97,875 and $300,000—$397,875	00	
	4 days interest,	265 25	398,140 25
J. W. M'Culloh,	- - -	300,000 00	
	4 days interest,	200 00	300,200 00
			$1,546,430 26

which notes so substituted now remain in the office at Baltimore, under protest, for non-payment.

The substituted notes appear to exceed the original notes by $5,400, and it was proposed by the report of the 17th May last, if this excess should be found to be correct, either to correct the adjustment by reducing one of the notes, or by giving the parties credit on some other account. It appears, however, that the substituted notes are so dated, as to leave 4 days interest uncovered, (as per the above statement,) which amounts to $1,030 26, and leaves an excess (supposing the excess to be real, which the office at Baltimore must determine,) of only $4,369 74.

These notes of $1,515,460, were secured as a part of the aggregate sum of $3,497,700, to the amount of $900,000, by the several collateral securities, recited in the report of 17th May last to that amount, and, as a part of the same aggregate amount, by 20,548 shares of stock Bank U. States, also particularly stated in that report; the certificates and instruments of hypothecation for the whole of which stock, are deposited at the Bank in Philadelphia.

The notes, together with some of the other documents given as a collateral security, of which a schedule is annexed to this report, are now deposited at the Bank, the rest are at the office at Baltimore. The report of the 17th May last, contemplates the transfer of the portion of the aggregate debt thus arranged, which was due to the office at Baltimore, to the Bank at Philadelphia, and the cashier of the Bank was directed to make the transfer accordingly. So much, however, of this report as provided for this transfer, was, on the 18th May last (the next day) suspended.

The committee, after due deliberation, are now of opinion, that the debt due to the office at Baltimore, ought not to be transferred to the Bank. The notes are payable, as well as those held as a collateral security, in Baltimore; the parties reside in Baltimore; and the property mortgaged for their payment, is situate at Baltimore. In short, the whole transaction naturally rests, and must essentially remain there; and therefore it would only create embarrassments to transfer the account. But, to separate it from the ordinary and current business of the office, the committee recommend, that in the weekly and other abstracts of the office at Baltimore, this debt be put down in a distinct line, as the debt due by S. Smith & Buchanan George Williams and J. W. McCulloh, or in some other way, expressive of the identity of it. And they recommend, that the notes and other documents connected with the collateral securities, which are now deposited at the Bank, (except

the pledged stock) be transmitted to the office at Baltimore, *and* put under the control and management of that office. And they recommend, that an examination be had by that office, into the accuracy of the excess of the amount of the substituted notes aforesaid, stated in the report of the 17th May last, and that the necessary corrections, if any, be made at that office.

They further recommend, that the original notes be delivered up immediately to the parties."

John White, the cashier, was then called again, and examined on this point. He proved that S. Smith & Buchanan would, in a few days, have paid on account of their part of the $900,000, the sum of $240,000, and that the remaining $60,000 was satisfactorily secured: That in his capacity of Trustee he had sold the property mortgaged by George Williams, but had not yet adjusted the accounts: That probably about $30,000 or $40,000 would be realized from these sales; That the farm mortgaged by James W. M'Culloh, had *not* been sold; and that of the endorsers of the promissory notes given by him, three only were solvent, and they disputed the payment of their notes, which were in suit: That Isaac Edmondson, indeed, one of the solvent securities, had, before his death, paid his notes, amounting to $12,500, in order to stop interest; but they were paid on the express condition, that the amount should be refunded, in case the Bank should fail in the suits: and that he understood the calculation of the Board of the Parent Bank to be, that of the $900,000 nominally secured, as had already been stated, from about $400,000 to $500,000 would be ultimately realized.

General Harper then stated, that he would offer evidence on the part of the prosecution to prove, that at the time when these operations of the Traversers, with the funds of the Bank, under the name of stock loans, were undertaken, the house of S. Smith & Buchanan, whatever might be its real stability, possessed a very high degree of credit, and the reputation of great wealth; and that George Williams was in opulent circumstances; while James W. M'Culloh, the other associate, was known to be wholly without property. From these facts, if proved, taken in connexion with the official situation of M'Culloh, very important inferences in relation to the objects and motives of the Traversers, in these transactions, would be drawn.

General Winder, on the part of the Traversers, admitted the facts, which were accordingly stated in evidence.

It was then stated by the counsel, and admitted on the part of the Traversers, that they had all applied for, and obtained, the benefit of the insolvent law, and their discharges under it, since this indictment was found.

And here the evidence was closed on the part of the state.*

Wednesday, March 26, 1823.

GENERAL WINDER for the Traversers.

He admitted that the conduct of the Traversers was indiscreet; that they relied too strongly upon the hopes and calculations in which the whole community indulged; but the failure of their stock speculations was rather to be pitied as a misfortune, than condemned as a crime. Those who were now the most eager in prosecuting his clients, were, in 1817, the first to praise the course of conduct for which they were indicted: and those who now believed them guilty of a conspiracy to defraud, were then their most strenuous supporters. It was his (Gen. W's) intention to show, that the several charges contained in the indictment were contradicted, by the positive testimony of the most respectable witnesses. His clients were charged,

1st. As being combined together.

2d. To obtain and embezzle money belonging to the office of Discount and Deposit in Baltimore, without the knowledge of the Board.

3d. For the purpose of enjoying the use of the same two months, without paying any interest or discount; and

4th. Without securing repayment.

To sum up all, it was contended, that the sole object of the Traversers was, to cheat the Bank out of the interest of their money.

In order to contradict these allegations, it would be shown, that the whole amount of stock discounts ($1,540,000,) was continued by formal entries of discounts in all the books of the Bank: That it was, or ought to have been known to the directors, that such discounts were made, and that the directors generally, availed

* The Attorney General gave particular evidence, under this indictment, of the overdrawings of James A. Buchanan, and the concealment of them by James W. M'Culloh from the Board of Directors; which he at first relied on to support the general count: but as he afterwards withdrew this evidence from the present case, and adduced it under the second indictment, where it will be fully stated, it is omitted here.

themselves of such private discounts, by the president and cashier. It would be shown, that the origin of these stock speculations was, the desire of securing a debt from the Mechanics' Bank of Baltimore, to the office of Discount and Deposit; for which purpose three several purchases were made from Dennis A. Smith, by which he was enabled to pay a large sum due to the Mechanics' Bank, which in its turn paid the same amount into the office: That a secret committee was appointed by the Board of the office, to meet one from the Mechanics' Bank; at a meeting of which committee, the situation of the latter bank was developed, and the U. S. Bank secured apparently against loss, by the purchases of stock from Dennis A. Smith: That the profits on the first two purchases amounted to about $500,000, and that the third was made for D. A. Smith, and its profits secured to him: That the alteration made in the books, by transferring a large sum from stock loans to bills receivable, was occasioned by the secret committee, on account of the importance of concealing the state of the Mechanics' Bank from the Parent Bank in Philadelphia, and also to save D. A. Smith's credit there: That until the 11th of August, 1817, the whole amount of bills receivable, and stock discounts, was included in one line; after that date, two lines were used, and any alteration in the usual mode of proceeding, as the increase of bills receivable, and diminution of stock list, was rather calculated to excite inquiry, than to serve the purposes of concealment.

It would be shown, that at this time, through the application of the cashier, (James W. M'Culloh,) a committee was appointed to examine into the state of the office of Discount and Deposit, which was only prevented from doing so, by the absence of one, and the sickness of another of its members.

That at the several meetings of the Board of Directors in Baltimore, the different books showing the discounts, and the state of the bank, were always placed so as to invite inspection: That after protesting, by letter, without success, against the curtailing order of the Parent Board, bearing date the 19th February, 1819, it was agreed to renew the notes without the formality of discount, in order not to violate the instructions of curtailment:

That the president and cashier represented to the Board in Baltimore the necessity of remonstrance, arising from the debt of the Mechanics' Bank, and that the journey made by them to Philadelphia, for the purposes of explanation, was approved by the Directors:

That verbal explanations from the statement *x*, were given to the Parent Board, by whom the subject was referred to a committee, which reported on the 30th March: That it was then referred to a committee of the Baltimore directors, viz: John Oliver, Geo. Hoffman, and John M'Kim: That this committee reported on the 10th of April, when the subject was again referred, and the report of the last committee on the 17th May adopted: That all these reports state the amount of the stock debt at the settlement to have been,

George Williams, - - - -	$169,833 34
James W. M'Culloh, - - - -	571,864 89
James A. Buchanan, - - - -	798,301 77
	$1,540,000 00

That this settlement includes the notes of $251,280, $325,000, and $318,350 in amount, though not in form: That the statement *x*, exhibits the sums of $251,280, $325,000, and $318,350, as advances on stock above par, hypothecated elsewhere than in Baltimore, and not on personal security: That the statement *x* was exhibited to the Parent Board, with the pay list of March, 1819, and showed without a doubt, that no concealment was designed; since it explained the character of these notes:

That in the last report of 17th May, 1819, it was admitted, that the statement *x* was submitted with the pay list, and that the Board unanimously confirmed the report and statement of the committee.

2. He (Gen. W.) said, that with regard to the $645,400 stock notes, to meet which, it was alledged there were only 34 shares, it would be proved;

By the report of the 17th May, that 2,558 shares were transferred from Baltimore to Philadelphia on the 14th May at 125 per cent, which, together with 13,026 shares 25 per cent above par, or pledged at par only in the Parent Bank, amounted to $645,400 for the general loan on stock in Baltimore and Philadelphia above par; and that the report of the 17th May recognises the hypothecation of the stock, for the advance in Baltimore.

3. That the Board did see and know, the progress of the stock discounts: That the offering book of stock discounts was before them: That among the offers for discount on stock, by the Board of the office, were

Friday,	11 July, 1819,	W. Patterson & Sons,	$11,000
	15 do.	John Donnel,	
	22 do.	Hughes,	
	29 do.	C Deshon,	
	1 Aug. 1819,	Donnel & N. Williams,	
	8 do.	C. Deshon, - -	$30,000

and that on the 8th of August, 1817, the Board thought it more advisable to refer the propriety of discounting on pledges of stock, as executive business, to the executive officers of the Bank: That after this change in the usual course, there was a line in the statement book, exhibiting at a glance, the conduct of the officers; and if any attempt had been made to defraud, this book would at once have disclosed it to the directors:

That in the Discount Ledgers, or Credit Books, the distinction between stock discounts and those on personal security, always existed; although in the statement book, no difference was made until August the 11th, 1817: That the discount offers, registered in the same book with the other offerings, but in a different place, showed to the Board the executive discounts in detail, and thus prevented fraud on the part of the officers: That the aggregate amount of stock, and the aggregate amount of bills, were added up in the same place in the offering book; whereas, in the statement book, there was only the aggregate of both: and that all the notes in question were as regularly entered, and with as much publicity, as any other notes or bills ever discounted; so that, in fine, the directors might see the state of the Bank, whenever interest, duty, or curiosity, led them to inquire and examine.

To convince the honorable court that there was ample security for the repayment of the loans made by the Traversers, he (General W.) would show, that they possessed 47,398 shares, of the value of $1,900,000, while their notes endorsed on the 2d of November, 1818, only amounted to $1,540,000; and this, he declared, would be a conclusive refutation of the averment, that the loans were made without security, as no one disputed such a deposit being made in the Bank.

Gen. Winder stated his intention of relying in his defence of the Traversers, upon the following articles in the Rules and Regulations for the government of the Office of Discount and Deposit.

"*Art.* 5. It shall be the duty of the Cashier, carefully to observe the conduct of all persons employed under him, and report to the Board such instances of neglect, incapacity, or bad conduct

as he may discover in any of them; daily to examine the settlement of the cash account of the Office; take charge of the cash, and whenever the actual amount disagrees with the balance of the cash account, report the same to the President and Directors without delay; to attend all meetings of the Board; keep a fair and regular record of its proceedings; give such information to the Board as may be required; consult with Committees when requested, on subjects referred by the Board; and also to perform such other services as may be required of him by the Board."

"*Art.* 16. On each application for Discount, every Director who may be present, shall be held to give his opinion for or against the same. And no Discount shall be made without the consent of three fourths of the Directors present; and all notes and bills discounted shall be entered in a book, to be called *The Credit Book*, in such manner as to discover to the Board, at one view, on each Discount day, the amount which any person is discounter, or is indebted to the Office, either as payer or as endorser."

"*Art.* 21. A Committee on the state of the Office, shall be appointed by ballot every three months, to examine and count the discounted notes, and compare the amount thereof with the balance of the amount of bills discounted in the general leger; they shall also count the cash, and examine the evidences of the other property of the Bank, and make an inventory of the same to be compared with the books in order to ascertain their agreement, and make report to the Board."

"*Art.* 31. The Directors of the Offices shal be empowered to form and establish all other Rules and Regulations for the interior management of the Offices; Provided, the same be not repugnant to law, or to the Rules and Regulations of the Bank of the United States, or the Resolutions of the Directors thereof."

Thursday, March 27, 1823.

Having stated the grounds of defence on which he meant to rely, General Winder now proceeded to examine the witnesses on the part of the Traversers, who were then called and sworn.

General Winder here offered in evidence and read a resolution of the Parent Board, requiring the office at Baltimore to reduce the balances due to it, dated April 8th, 1817.

"*Bank of the United States, April 8th*, 1817.

"*Resolved*, That the President be authorized to instruct the Board of Directors of the Office of Discount and Deposit at Balti-

more, to require of the banks of that city, a speedy reduction of the balances which have accumulated against them, since the original transfer of the public money from those banks to the Bank of the United States.

Extract from the minutes,

(Signed) JONA. SMITH, Cashier."

Mr. Thos. Finley, being first examined on the part of the Traversers, stated, that he was a Director of the Office of Discount and Deposit in Baltimore in the year 1817, at which time the balance due from the Mechanics' Bank became as much as $800,000. That there was a meeting of the Directors on the subject at the house of James A. Buchanan, when a Committee, consisting of the President, Messrs. Taylor and Colt, to be aided by the Cashier, was appointed to meet a committee from the Mechanics' Bank.

There was a verbal report made by the Committee, that measures were taking which would probably accomplish the object in view, but that further facilities would be wanting. The Committee did not make a detailed report, deeming it not prudent to disclose the situation of the Mechanics' Bank. That in March 1819, Mr. Buchanan in speaking of the pay list, which he held in his hand at the time mentioned to the board, that the occasion of making the purchase from D. A. Smith, was to facilitate the arrangement with the Mechanics' Bank, and to secure the debt from it to the Office of Discount and Deposit, which would be done by enabling D. A. Smith to pay the Mechanics' Bank.

That J. A. Buchanan also said, that he was going to Philadelphia with the pay list, and would be accompanied by Geo. Williams and J. W. M'Culloh, to make the same explanations to the Parent Board, which he had made in Baltimore; and also, if it was thought necessary, to give further security for the loans that they had obtained.

The witness also stated, that Mr. Colt was present at this time, and said, that if the Office *was even to lose the whole line of* $600,000, it would be a gainer by the services *these gentlemen had* rendered. That he (the witness) does not know what was meant by the "line of $600,000:"

That Mr. Taylor, who was a member of the Board, and present at the time, made but few remarks, but concurred in what had been said by Mr. Colt: That the pay list was upon the table for a short

time: he believed that Mr. Colt looked at it, but did not examine it particularly; and that Mr. Taylor also looked at it:

That the discount book and statement book were always on the table, when the directors met. That it was the general custom to look at the statement book, but not usual to examine the offering book; because a memorandum of the amount of notes offered, and of receipts, was always furnished, and the notes themselves always examined: That the credit books were laid upon one corner of the table, open to the inspection of any director.

The witness also stated it to be his impression, that a note of S. Smith & Buchanan for $540,000, without any endorser, was brought before the Board, and discounted by it, as a note secured by a pledge of stock.

On being cross examined, the witness stated,

That he thought Mr. Buchanan referred to all the purchases from Dennis A. Smith, as being made with a view to benefit the Branch Bank: He did not recollect, that it was then stated at the Board by J. A. Buchanan, or at any other time, or was known at all, that more than 125 per cent had been taken. Heard something of more from one of the parties, but does not recollect which of them, nor at what precise time: That at the meetings of the Board, the cashier took the offering book before him, and if he was absent, one of the directors officiated in his place. Mr. A. A. Williams and Mr. L. Taylor, acted for some time: That there was no resolution made by the Board, authorising the president and cashier to discount on stock. Such discounts were at first made by the Board, and afterwards there was a general understanding, although no resolution by the Board, that the president and cashier might discount to *par* value on stock, as that was deemed sufficient security. Mr. Farley also stated, that he recollected some conversation at the Board, about that time, to this effect; that stock was always worth par, and it was desirable to grant loans on it, which it would be best for the president and cashier to make; and that the executive officers, however, appeared to consider themselves authorised to make discounts to a larger amount, and the Board were willing that they should do so: That Amos A. Williams stated in his place at the Board, that he was informed by his brother George Williams, then a director in the Bank of the United States, who had recently returned from Philadelphia, that the Parent Bank was not only willing, but desirous, that loans of $125 per share should be made on stock: That in the winter, Dec. and January

1818—19, he understood, from public report that they had gone above $125; but official information to that effect, was never given to the Board: That sometime in the same winter, Mr. M'Culloh told him, (the witness) that as soon as the arrangements then going on in Philadelphia were completed, the whole matter would be brought before the Board in Baltimore. That he (the witness) had also some conversation with George Williams, when the latter asked him, whether any paper with his (Williams's) name on it, had been discounted without the knowledge of the Board; adding that if such were the fact, it was contrary to his wishes and intentions.

That in Nov. 1818, the Cashier (J. W. M'C.) asked for a committee under the bye laws to examine into the state of the Bank. Such a committee was appointed, consisting of R. L. Colt, L. Taylor and Geo. Hoffman. That there had never been more than two committees, one in 1817 and the other in 1818; the first of which only reported; its object being to see whether the transfer of specie and funded debt of the United States had been fully made.

Mr. N. F. Williams gave in evidence, that he was a Director of the Office of Discount and Deposit in March 1819, in the early part of which month, the President (Jas. A. Buchanan) took up the pay list at a meeting of the board, and stated, that by the direction of the Parent Board, a list had been prepared at the Office in Baltimore, showing the amount of loans, to whom they were made, and upon what security.

That for the security of the loans made to J. W. M'Culloh Geo. Williams and himself, they owned, besides other property, a large amount of shares of the Bank of the United States, pledged chiefly at par to others: (*i. e.* to other persons or other institutions):— That they had become purchasers of this stock, either the whole or a considerable part, (witness did not recollect which) to assist Dennis A. Smith in settling his affairs with the Mechanics' Bank, and to enable that Bank to liquidate its debt to the Office of Discount and Deposit: That the debt due the Office of the Bank of the United States by the Mechanics' Bank had been very large and the situation of that bank very perilous; and that in order to preserve it, a committee had been appointed to meet one from the bank, to adjust matters according to their discretion. That he, (Mr. Buchanan) accompanied by George Williams and J. W. M'Culloh would proceed to Philadelphia, and make the same explanations there which had been made in Baltimore, and endeavor to arrange matters in such a way, that the Office of Discount and Deposit

would be relieved from the operation of the order for the curtailment of loans on stock. He (Mr. Buchanan) then observed, that as stock had fallen considerably below what it was when they became borrowers, the Parent Board might perhaps deem further security necessary; and if they did, the parties would be on the spot and able to judge of the practicability of giving it.

That some conversation then took place in an under tone between James A. Buchanan and those near him, by which the witness received the first information of the embarrassment of the Mechanics' Bank—Mr. Buchanan said they had several painful meetings at his house, and often remained late upon business.—That Mr. Colt sat next the president at the meeting in which the above conversation took place, having the pay list in his hand.—After looking over one or two pages he remarked, that he also was a member of the committee to meet one on the part of the Mechanics' Bank; and that in addition to what had been said by Mr. Buchanan, he would beg leave to remark, that such was his opinion of their services and the merit of their undertakings (alluding to the purchases of stock) that if the office should lose the whole line or sum of $600,000, an event which he did not apprehend, still it would be a gainer by their operations. Witness did not know what was meant by the whole line.

That Mr. Taylor then said, he entirely concurred in the sentiments of Mr. Colt, and in the correctness of the statement made by the president.

That he (witness) never knew of any discount above 125; nor did he ever hear the rate of stock, discounted in the purchases from D. A. Smith, stated by Mr. Buchanan.

Amos A. Williams gave in evidence, that he had been director for two years after the organization of the Bank. That in April 1817, the Mechanics' Bank was indebted about $800,000 to the Office of Discount and Deposit; and that there was a balance more or less against all the State Banks: That the debt of the Mechanics' Bank gave rise to much anxiety in Baltimore and Philadelphia, and a committee was appointed by the Board of Directors to meet one from the Mechanics' Bank. That he (the witness) soon after perceived an important change in the item against the Mechanics' Bank; and on enquiring how the settlement had been effected, was informed by either Mr. Colt or Mr. Taylor, that they were enjoined secrecy, but that the committee were perfectly satisfied with what had taken place.

At a subsequent period he met one of these gentlemen, and on again questioning him as to the settlement with the Mechanics' Bank, was told that he must ask no questions, as the whole affair was confidential.

That Mr. Taylor told him, (the witness) that after he had left the Bank in November 1818, large discounts were made above 125; of which fact D. A. Smith had informed Mr. Donnel when going to Philadelphia in the steam boat.

That Mr. Colt had said, he thought himself a fool for not taking a part in the purchases from Smith, but that he had been afraid of the risk. This remark was after the last purchase from Smith and after the appointment of the committee. The board had risen, and Mr. Colt, Mr. A. A. Williams and James A. Buchanan were conversing together.

Mr. Meredith gave in evidence, that A. Brown, P. E. Thomas, C. Mayer and himself composed the committee appointed by the Directors of the Mechanics' Bank to meet one from the Office of Discount and Deposit: That D. A. Smith failed in the beginning of April, 1817, when the Mechanics' Bank owed the office 8 or $900,000: That the first meeting of the committee with the one from the Office of Discount and Deposit was at the house of James A. Buchanan; the witness, A. Brown and Col. Mosher, attending on the part of the Mechanics' Bank, and James A. Buchanan, Lemuel Taylor, R. L. Colt and J. W. M'Culloh on the part of the office. A full statement of the affairs of the Mechanics' Bank was then given, and its Books exhibited to the committee from the office, under a promise of secrecy. After this statement, the next object to be taken into consideration, was the relief of the Mechanic's Bank; and to this end it was agreed, that the office should grant facilities to enable it to support its credit, viz: in part, by discounting a large amount of bills receivable which had been transferred to the Mechanics' Bank by Dennis A. Smith. Other measures were afterwards suggested by James A Buchanan and J. W. M'Culloh, the purport of which the witness did not recollect. This agreement was made at the first meeting of the committee. At the second meeting, when only James A. Buchanan and J. W. Culloh attended from the office; and the witness and A. Brown from the Bank: the adjustment of the accounts of D. A. Smith was the principal business. Some difference of opinion existing between the witness and A. Brown with respect to the interest, P. E. Thomas was sent for, and the whole account was settled, viz. considered as paid.

That the amount of Bills receivable transferred to the office was about $400,000, the whole debt being about $800,000, which balance was not adjusted until after December 1817. That it was proposed by J. W. M'Culloh, that the Mechanics' Bank should borrow six per. cent. stock, which might be sent to Boston for sale, and the proceeds paid to the Office of Discount and Deposit in Bills of Exchange. This was proposed in a private conservation with Mr. M'Culloh before the first meeting, and might have been mentioned afterwards, but was never assented to.

The witness further said, that the balance due by the Mechanics Bank was believed to have been settled from the proceeds of the sales by D. A. Smith to James A. Buchanan, M'Culloh and Williams: That the settlement went on progressively as Dennis A. Smith was able to obtain funds: That in December, 1817, sales of stock had been made in Philadelphia at, from 150 a 154; viz. 1000 shares at 150, by William Sansom, and 400 shares at 154 by W. S. Wieland.

General Winder here referred to, and read the proceedings of the Parent Board in Philadelphia on the 30th March, 1819.—Mr. Meredith continued: The last meeting between the two committees was in December, 1817, and was for the sole purpose of arranging the account of D. A. Smith with the Bank. There never were more than two meetings.

Mr. D. A. Smith gave in evidence, that the last 12,000 shares. sold to Buchanan and M'Culloh in December, 1817, were of contracts held by witness from various persons and yielded him a profit of $55,000: That S. Smith & Buchanan, James W. M'Culloh and G. Williams released to him a mortgage which they held upon the Calverton Estate of $40,000 and which he afterwards assigned to the Mechanics' Bank: That this release, however, made no part of the stipulations in the sale of 12,000 shares.

Mr. Alexander Brown gave in evidence, that there never was but one meeting of the committees from the Mechanics Bank and the Office of Disount and Deposit; at which meeting the concern was finally arranged. This was in April, 1817, when it was agreed, that the Mechanics' Bank should transfer to the office a large amount of bills receivable, (about $250,000) assigned by D. A. Smith to the bank; and also Col. Mosher's notes for about $300,000, and that for the balance, (which did not exceed the usual accommodation to city banks) the office gave them credit on paying the common interest. That the bills receivable, including Mosher's notes (which

were either primary or collateral security,) were immediately handed over to the Office of Discount and Deposit to be discounted by it. Dennis A. Smith had also assigned to the Mechanics' Bank other good notes, but which as they were at a longer date than it was customary to discount, the office refused to receive. On being cross examined he stated, that he did not know the exact amount of the debt of D. A. Smith to the Mechanics' Bank, but considered it as secure after these notes to the amount of $400,000, were assigned to it.

That witness, Jonathan Meredith and Phil E. Thomas were appointed by the Mechanics' Bank, and James A. Buchanan and James W. M'Culloh by D. A. Smith, to settle the account between the latter and the Mechanics' Bank: That the only disagreement was about the amount of interest, which however was finally compromised in December, 1817.

He (the witness) recollected no remark of Philip E. Thomas about the facilities given to Dennis A. Smith, in the settlement of his account with the Mechanics' Bank, by the sale of his shares to the office of Discount and Deposit. The Mechanics' Bank did not continue to pay interest to the office longer than the other city banks. The witness further stated, that the arrangement of April 1817, was effected by showing a correct statement of the affairs of the Mechanics' Bank to the committee from the office of Discount and Deposit, including the assignment of notes to the amount of $400,000 from D. A. Smith, which it was supposed would cover his debt: That in December, 1817, the credit of the Mechanics' Bank was very good, and no pressure was expected from the office, nor from any other quarter that would place the Bank in danger.

General Winder here offered in evidence the Ledger Book, 28th April, 1817, where it appeared, that notes of Col. Mosher to the amount of $300,000, had been discounted at the office of Discount and Deposit; which notes the witness stated to have been collateral security, for notes assigned by the Mechanics' Bank to the office. Mr. Brown then proceeded to say, that the amount of Dennis A. Smith's debt in December, 1817, was about $300,000, which was paid, in part, by the assignment of 4,000 shares, after paying the amount for which they were pledged.

Dennis A. Smith, in continuation, stated, that his debt to the Mechanics' Bank was paid in the following manner:

Profits on stock transactions with J. A. Buchanan, J. W. M'Culloh, and George Williams, - - -	$55,000
Calverton estate, - - - - - - - -	90,000
Notes discounted by Mr. Oliver, - - - - -	50,000
Kimmels' and other notes, about - - - -	105,000
	$300,000

Mr. Meredith, in continuation, stated, that at the first meeting of the committees from the Mechanics' Bank and the office of Discount and Deposit, the situation of the former was not ascertained, but its solvency was supposed to be materially affected by the state of Dennis A. Smith's affairs: That it was considered important to keep the whole affair *secret; and it* was suggested, that the bills receivable should be collected by the Mechanics' Bank, and not by the office, in order to preserve the credit of the Mechanics' Bank; this suggestion, however, was not adopted. That he (the witness) did not recollect having stated to the committee the amount of D. A. Smith's debt to the Mechanics' Bank; he supposed it, however, to amount to near $1,200,000, *of which* he thought he had informed, at least, James A. Buchanan and Philip E. Thomas: That after the balance of discounts had been reduced with the office of Discount and Deposit, public confidence was fully restored.

Mr. Dennis A. Smith, on being again called, stated, that he was confident his debt to the Mechanics' Bank did not exceed 7 or $800,000, and it was created solely by the responsibilities of the Mechanics' Bank for him.

Mr. Meredith then stated to the court, that having refreshed his recollection, he was convinced he had been mistaken in supposing the debt of Mr. Smith to have amounted to $1,200,000.

Mr. Brown then continued with his evidence. At the first meeting of the committees, it was not supposed that Mr. Smith's debt exceeded $500,000, for which security to the amount of $400,000 was given. That afterwards, it was discovered that there were liabilities on the part of the Bank for Mr. S. in other places, to the amount of 4 or $500,000 in addition. This, however, was not suspected at the first meeting, and was afterwards secured to the satisfaction of the Mechanics' Bank by Mr. Smith.

General Winder then offered in evidence the discount book of the office of Discount and Deposit, by which it appeared,

That Col. Mosher's note was renewed 1st July, 1817, for $180,000, reducing the debt of the Mechanics' Bank by $120,000. This note fell due on the 30th August, 1817, and on the 2d of September was renewed for $100,000. On the 3d of November, it was renewed for $18,165 55; on the 22d of November, 1817, there was a discount of $129,318; and on the 6th January, 1818, a discount for $49,216 67.

Mr. R. L. Colt gave in evidence: That he was present at the meeting of the committees from the Mechanics' Bank and the *office of Discount and Deposit, at James A. Buchanan's house*; when, from the examination of its affairs, he was perfectly satisfied of its solvency with regard to all its creditors, excepting stockholders. He at the same time proposed, that some of the bills of the Mechanics' Bank should be transferred to the office, which was agreed to: That in his report to the Board of the office, he stated, that the debt was safe; and on being asked further, by some directors, had declared he could not enter into the particulars. He recommended that the notes of the Mechanics' Bank should be received, and that the office of Discount and Deposit should discount those which had been assigned to it.

Friday, March 28, 1823.

James Cox, cashier of the Bank of Baltimore, gave in evidence, That at a meeting of committees from the several Banks of Baltimore and Philadelphia, held in Philadelphia, early in 1817, it was agreed to resume specie payments. That some time after the establishment of the office of Discount and Deposit, the local Banks generally became indebted to it: That soon after the resumption of specie payments, the United States Bank agreed to give certain credits to the different State Banks on the payment of interest. The accounts between the Banks and the office of Discount and Deposit, were struck weekly. All the city Banks did not discontinue the interest account with the office of Discount and Deposit at one period, but from time to time as their situation enabled them to do so.

Jas. L. Hawkins, Cashier of the Franklin Bank stated in evidence, that towards the end of 1816, efforts were made to induce the State Banks to resume specie payments. The 1st of July was fixed upon; but this not being satisfactory to all the parties, a committee consisting of J. H. Nicholson, Samuel Hollinsworth and Henry Payson, was appointed to proceed to Philadelphia and make

some arrangement with the Directors of the United States' Bank. It was there agreed that specie payments should be resumed from February 1817: *Provided*, that the United States' Bank should not, before the first of July following, require specie payments, on receiving the interest on the balances due to it. The same arrangement was made with regard to the payment of interest between the several State Banks up to the 1st July 1817; when it was believed, that the interest accounts generally ceased, with the exception, as the witness heard, of the Mechanics' Bank.

Mr. Thomas Finley being again examined, stated, that about the month May 1817, the members of the board and the public generally felt and expressed a strong desire that the commercial credit of Dennis A. Smith should be sustained; and with this view the board granted him a discount of about $200,000, which it was understood would enable him to resume his payments.

General Winder then proceeded to read in evidence a letter from L. Cheves, President of the Parent Board, to S. Smith & Buchanan, bearing date May 14th, 1819, approving the final arrangements which had then been made by the Committee from Baltimore. He also read a statement of the value of the stock which had been purchased by the Traversers, and the letter of R. L. Colt, dated in May 1818, stating the price in London to be £32 10s, ($140), and that it was expected to rise in August to $155.

Mr. Jona. Meredith further stated in evidence, that soon after the failure of D. A. Smith, he, together with Phillip E. Thomas was sent by the Mechanics' Bank to negotiate with the Bank of Pennsylvania. When in Philadelphia, he, (the witnesss) was informed by Mr. Thomas, that the sensation created by Dennis A. Smith's failure was such as to render it imprudent to begin any negociation.

Dennis A. Smith also stated, that the last sale which he had made to the Traversers produced to him near $55,000, which, together with the subsequent voluntary release of a mortgage on the Calverton estate, made about $95,000. The witness further said, that it would have been difficult for him to have sold an equal amount of stock to any person except the Traversers; and he was told by one of them (J. W. M'Culloh) that if any profits should arise from the last sale, they should be made over to him. The release of the mortgage on Calverton was no part of the bargain for 12,000 shares but was subsequently made by J. A. Buchanan, under the impression that the purchase would be profitable.

By the books of the Office of Discount and Deposit which were produced by General Winder in evidence, it appeared that the fol

lowing was the situation of the debt from the Mechanics' Bank to the Office, from the 3rd of November to the 1st Dec. 1817.

November 3,	1817,	$19,065 11
5,		11,419 75
10,		9,535 11
13,		12,000
17,		8,000
20,		15,000
24,		6,665
27,		14,000
December 1,		9,547 14,

and from an inspection of the accounts of the Commercial and Farmers' Bank, City Bank, and Mechanics' Bank for November and December 1817, it appeared, that the Mechanics' Bank was not more indebted to the Office of Discount and Deposit than the other banks generally.

Mr. Dennis A. Smith then continued to state in evidence, that 4,000 shares, a part of the 12,000 which had been sold to Buchanan Geo. Williams and J. W. M'Culloh were, prior to the sale, hypothecated with A. Brown & Sons, and a loan of $60,000 made to him upon it by discounting S. Smith & Buchanan's note. The sale of the 12,000 shares subsequently made, relieved the stock from this as well as other liens, and realised the additional profit of $55,000, so that the whole profits made by the witness amounted to - - - - - - - - - $60,000

55,000

$115,000

The first item, $60,000 being gained before the sale to the Traversers, and the second afterwards, as his means of paying the $60,000 were not effected by the sale of the 12,000 shares which only produced $55,000.

The evidence for the Traversers then closed.

Note—The foregoing statement of the evidence on behalf of the Traversers, the previous opening of General Winder, and his subsequent argument, were presented to that gentleman for revision, after they had been framed from the notes of the several counsel for the prosecution. The pressure of business, however, during the sitting of the court in Baltimore, and his having to attend the court of Appeals, would prevent him, he said, from paying any attention to the subject. All the papers in the cause having been returned by General Winder to those from whom he received them; the letletter of L. Cheves to S. Smith & Buchanan, bearing date May 4th 1819, and R. L. Colt's letter of May 1818, could not be obtained for insertion.

The Attorney General then proceeded to adduce evidence in reply. It would be remarked, he said, that the defence seemed to be rested chiefly on two points: a supposed authority from the Branch Board, to the Traversers Buchanan and M'Culloh, to make loans on pledges of stock; and a wish and intention on the part of the Traversers, to save the Branch Bank from loss and the Mechanics' Bank from ruin, by making large purchases of stock from D. A. Smith, so as to enable him to pay his heavy debt to the Mechanics' Bank; by which that Bank was in its turn to be enabled to sustain its own credit, and pay its debt to the Branch. He would direct his evidence in reply, he said, to these two points: and first to that of authority.

The first witness examined on this point, was George Hoffman. He swore that he was a director of the Baltimore Branch from December 1816, to November 1818: That during this time no power was given to the President and Cashier, by the Branch Board, to discount notes on stock: That as it was then understood, that all stock loans were granted on regular pledges of stock, at par, it was not considered as material that the Board should know the names of the borrowers; the effective security consisting in the stock, and not in their notes; and that he had always understood that the resolution of August 26, 1817, authorizing loans on stock at 25 per cent above par, was confined to the Parent Board, and remained in existence no more than eleven days.

John M'Kim, jun. was next examined. He proved, that while he was a director of the Baltimore Branch, that is, from November 1816 to early in 1819, he never knew or heard, that the Board gave power to the President and Cashier to make discounts on stock; but he thought there was no risk in making them on pledges of stock, at par; and it never entered into his head to look at those made at the Branch, for which he supposed that stock at par was actually pledged and deposited: That he never understood, that any stock loans had been made at the Branch above par, till an order came from the Parent Board to curtail: and that the Parent Board itself discounted on stock at 25 per cent above par only about eleven days.

Roswell L. Colt was next examined. He stated, that while he was a member of the Baltimore Board, from November 26, 1816, to November 26, 1819, no power was given by that Board to the President and Cashier to discount on stock: That he knew they exercised such a power, but always supposed, and had been given to un-

derstand, that it was derived from the Parent Board: That he supposed this power to be limited to cases, where stock at par was regularly pledged, to the full amount of the loan; and never understood, except from report out of doors, that such loans were made at the Baltimore Branch, above par: That he was present at the Branch Board, in March, 1818, when the pay list was produced, and James A. Buchanan, the President, stated that large loans had been made on stock, which it was necessary for him, Buchanan, to go to Philadelphia and explain; but that Buchanan did not state that those loans were above par.

James Beatty was also called, and swore that while he was a director of the Baltimore Branch, that is, from 27th November, 1817, to 27th November, 1820, he never heard of any power being given by that Board to the President and Cashier, to discount on pledges of stock: That he always supposed the power to be derived from the Parent Board; and had once received from the Cashier a discount himself, on a pledge of stock; but it was at par.

The Attorney General observed, that he would next proceed to the second branch of his reply; which related to the alledged object of the Traversers in making their extensive purchases of stock from Mr. D. A. Smith; purchases which they represented as the cause of the stock loans in question.

On this subject, the first witness examined was John White, the present Cashier of the Branch Bank, of which he was a director in March, 1819, when the communication spoken of by the witnesses for the Traversers, was made to the Board by James A. Buchanan.

He stated that he was present at a meeting of the Board, in March, 1819, when James A. Buchanan holding in his hands a paper which he stated to be a pay list, made out in pursuance of an order from the Parent Bank, went on to observe, that he, J. W. M'Culloh and George Williams, had obtained large loans on stock, to an excess of about $800,000; but whether above the par value of their stock, or above its amount at $125 the share, he does not certainly recollect: That he thinks however, it was above the amount at 125, or 25 per cent advance: That he sat at a distance from Mr. Buchanan, at the opposite end of the table, and did not hear very distinctly what he said, or attend to it very particularly: That Mr. Buchanan represented the object of these loans to be, a laudable effort upon his part and that of M'Culloh and Williams, to sustain the credit of the Mechanics' Bank, and of the city; and that some

of the directors present appeared to be satisfied from these representations, that the effort was laudable.

Mr. White added, that until the occasion in question, he had known nothing in particular about stock loans, or the rate at which they were granted; having always supposed it to be executive business, confided to the President and Cashier, by the Parent Board.

James Beatty was also examined on this subject. He stated, that he was present at the Branch Board in Baltimore, in March, 1819, when the President, James A. Buchanan, having the pay list in his hand, observed to the Board, that himself and James W. M'Culloh, were going with it to Philadelphia: That Mr. Buchanan added something about the order for curtailments from the Parent Board, and also stated in substance, that the large loans on stock which he and the other Traversers had obtained at the Baltimore Branch, were for extensive purchases of stock which they had made from Dennis A. Smith, to enable him to pay a debt of $800,000, which he owed to the Mechanics' Bank, and thus to secure a large debt which that Bank owed to the Branch: But the subject being entirely new to him, and delivered with great rapidity, he did not understand it then, nor can he give a precise account of what passed: That he heard no observation on the subject from Mr. Colt, who was one of the Directors present; and that the Board broke up immediately after this communication.

George Hoffman was next examined. He proved, that in March, 1819, James A. Buchanan called on him at his counting house; and addressing him, as he supposes, in his character of a director of the Parent Board, said, "you may have observed, that our house, (the house of S. Smith & Buchanan,) has not borrowed largely of the office, (the office of Discount and Deposit in Baltimore,) on personal security, but we have been compelled to do so on stock. The Mechanics' Bank was largely indebted to the office, and a wish to secure this debt, induced us to make our own larger." This, the witness said, was the substance of the communication; but he could not answer for the precise expressions.

John Hoffman was also examined on this point. He stated, that he was one of the directors of the Branch Bank, who were present at the meeting of the Board in March, 1819, when the pay list for the Parent Board was produced: That he stood next to Mr. Colt, at the time when James A. Buchanan, the President, after the ordinary business of the Board was over, stated, that in compliance with the order of the Parent Board, a pay list had been

made, with which he was going to Philadelphia: That he said something in vague and general terms, about the connexion of this pay list with the affairs of the Mechanics' Bank, and purchases from Dennis A. Smith, which the witness did not then understand, "and which," he added, "I do not now understand." That Mr. Colt had not the pay list in his hands: That Mr. Buchanan said very little, and that what he did say was in very vague terms—nothing particular: That, as he thinks, very little was said by any body; and he does not recollect that any thing was said on the subject by Mr. Colt, and that the Board separated almost immediately after the subject was first mentioned.

Roswell L. Colt being also examined on this point, stated, that he was present at the Branch Board of Baltimore in March, 1819, when James A. Buchanan, after speaking of the pay list which he held in his hand, alluded to the purchases which he and his associates, James W. M'Culloh and George Williams, had made from Dennis A. Smith, to save the Mechanics' Bank, and enable it to pay its debt to the Branch: That it was this circumstance, and the sight which he accidentally got of the three large notes at the bottom of the pay list, that first excited his suspicions, and induced him to mention the subject to Mr. M'Kim, then about to set out for Philadelphia, and subsequently to go there himself, and make a communication concerning it to the Parent Board: and that Mr. Buchanan's allusion to the Mechanics' Bank, and the purchases from Dennis A. Smith, was in very vague and general terms, embracing no particulars, or detailed explanations.

Being asked by one of the defendant's counsel, whether he did not make some observations, approving Buchanan's measures?

He replied that when he heard the observations of Mr. Buchanan, which were in general terms, and before he saw the large notes on the pay list, he might perhaps, although he did not recollect it, have expressed the opinion which at that moment he certainly entertained; which was that by these purchases Smith had been enabled to secure his debt to the Mechanics' Bank, and the Mechanics' Bank to make large payments to the Branch: But if he made this remark, which he did not recollect, it was under the impression that the statement made by Buchanan was true, and that the means by which the purchases had been effected were correct.

As to the remark about the whole line of $600,000, which had been ascribed to him by some of the witnesses, and of which he had no recollection, it was impossible he apprehended that he could

have made it in those terms; because there was no line of $600,000 as the books proved.

Mr. Colt further stated in answer to a question on the part of the prosecution, that he was a member of the Committee appointed in November 1818 by the Branch Board, to examine the state of the Branch, and that Lemuel Taylor was also a member. That he often asked the members to meet which they always omitted, sometimes he presumes from one cause and sometimes from another; such as indisposition or absence: That he was at length obliged to leave Baltimore on business, and was absent two months: That three months only were allowed for making the report, which was never made: and that the business of the Committee was merely to count the cash and notes on hand, and see whether they agreed with the statements in the books.

The Attorney General then showed from the books of the Baltimore Branch, which were produced and proved, the state of its claim against the Mechanics' Bank, during the period in question.

From this evidence it appeared, that from March 31st 1817, to May 1st, in the same year, this debt fluctuated

from - - - - - - - - - -	$522,877	64
Its amount on the first of those days, to - -	782,706	75
At which it stood on the last; and that on the 5th of		
May, 1817, it amounted to - - - - -	646,535	68
12th of June - - - - - -	512,968	14
16 " - - - - - - - -	179,681	31
19 " - - - - - - -	121,483	74
and on the 23rd, - - - - - -	106,374	70

after which it never rose much above the last sum.

This reduction, he said, would appear to have been the effect of the measures adopted on the 24th of April 1817.

He would now proceed to shew what had been, at the time, the opinion of the Traversers themselves, as to the effect of those measures, and the situation of the Mechanics' Bank and Dennis A. Smith immediately after their adoption. For this purpose he produced proved and gave in evidence the following letters; one of April 25th 1817, from James A. Buchanan to William Jones, President of the Parent Bank, another of June 23rd 1817; from James W. M'Culloh, to Jonathan Smith Cashier of the same Bank, and a third from James A. Buchanan of October 31st 1817, to the same person.

"*Office of Discount and Deposit, Baltimore April 25th* 1817.

SIR,

The extensive concerns of Mr. D. A. Smith, and his close connexion with the Mechanics' Bank of Baltimore, induced the Directors of that institution, on hearing that Mr. Smith's affairs were in an embarrassed state, to appoint a Committee from their Board, with power to attend to the immediate interest of the Bank, and to prevent any injurious impression which might grow out of the connexion and state of embarrassment. The Committee consists of James Mosher, President, and Alexander Brown and Jonathan Meredith, Directors, and it was one of their first acts, to ask a consultation with this institution. A Committee from this Board was accordingly appointed, consisting of the President, and R. L. Colt and Lemuel Taylor, Directors, and we met the deputation from the Mechanics' Bank last evening. A full, free, and unreserved interchange of opinion took place, the result of which is, a satisfactory conviction to our minds, that the Mechanics' Bank can sustain no loss from Mr. Smith. The Committee from that Bank, will continue to give unremitted attention to its concerns, and we entertain no apprehension for its safety or reputation.

The magnitude of the debt due to this office, next engaged the attention of the two Committees, and measures are in train, which will produce to us, this day, a payment of four hundred thousand dollars; which through the medium of funded debt, will be made a cash payment to us in Boston at the expense, if any, of the Mechanics' Bank.

Mr. Smith indulges the hope that he can go on with his payments. He is not yet under protest, and I am disposed myself to believe, that it may be avoided. I have not time to add more than assurances of the respect with which,

I am, Sir,

Your obedient servant,

J. A. BUCHANAN, Pres.

WILLIAM JONES, ESQ.

President of the Bank of the United States, Philadelphia."

"*Office Discount and Deposit, Baltimore, 23rd Jan.* 1817.

DEAR SIR,

I had the pleasure to address you on the subject of exchange a few days since, and again on the subject of retaining the funded debt for the Bank by arranging an agency to buy it, &c. this

last was addressed jointly to yourself and the President. I then intended to have soon visited Philadelphia for a day or two, but have been prevented, and shall not do so now for a month or two. Not having had the pleasure of hearing from either of you, and not intending soon to visit your city, I avail of the present moment to say what on one topic I meant to have done when with you personally.

The Mechanics' Bank made an arrangement to pay its debt to this Office, by a sale of sterling, and 6 per cents at Boston, the sterling has been all sold, the debt partly sold; a wish on the part of that bank to appear less indebted induced me to charge the Office at Boston to the Mechanics' Bank here for all the sterling and debt sent by it for sale, although about $240,000 of the debt is yet unsold. In addition to the above account of debt, which although ordered to be sold at current prices at Boston, may yet remain chiefly unsold for ten or more days, for it sells very slow at Boston; in addition to that account of stock I believe I could buy on 1st July about half a million of the banks here, and probably as much of individuals from time to time, should the bank make the arrangement I have proposed to you, and I think it could be had at 2 to 3 premium in all the next quarter.

I imagine that you might rely on this point for about one and a half million.

I feel it a duty to give these views to assist you in your decision, and should you decide to buy and deliver at par, if you do not succeed in getting it at a trifling sacrifice, why then you have only to do what you otherwise must, that is, deliver your own.

Sincerely yours,

JAMES W. M'CULLOH, Cashier.

JONA. SMITH, Esq. Cashier."

"[PRIVATE AND CONFIDENTIAL.]

"*Office Discount and Deposit, Baltimore, Oct. 31st,* 1817.

JONATHAN SMITH, Esq.

DEAR SIR,

I have asked and obtained the permission of Mr. M'Culloh to reply to your letter of the 29th inst.—It is proper that I do so, because the inquiry which you make, grows out of an arrangement between a Confidential Committee of the Mechanics' Bank, and one of this institution; of which latter I was chairman. At the time that Mr. D. A. Smith first hesitated in his payments,

the Mechanics' Bank owed to this institution a very large sum of money, and the connexion between Mr. Smith and that bank had been so close, as to make me believe it to be my duty, without a moment's delay, but with the utmost circumspection, to ascertain whether we were in danger of any and what loss. A Committee was appointed to meet a Committee from the Mechanics' Bank, and the first joint measure was, an agreement that our proceedings should be secret, and not even communicated to our respective boards.

It now appeared to our Committee, that if we would lend our aid to the Mechanics' Bank, every thing desirable for our safety, or connected with the reputation of that institution, could be easily accomplished. It was agreed, then, but a knowledge of this agreement is strictly confined to the committee, that purchases of funded debt and bills of exchange should be made for account of the Mechanics' Bank, and be transmitted by ours for sale, to those places where we wanted funds. All risk, whether of insolvency, or loss, and all profit, if any, was to be for the Mechanics' Bank; but, in truth, there was *no* risk from the quality of the bills, for none were touched but such as were of unquestionable character. In this way, we have gone discreetly on, and have reduced the very heavy debt due us to almost nothing. We have done more. Our account with Boston and New-York has been considerably relieved, and the Mechanics' Bank is of unimpaired credit, having accomplished this desirable end without other loss than that of interest.

I make this communication to you, sir, unreservedly, but in strict confidence. You may therefrom, however, be enabled to satisfy your Board, without subjecting me to the charge of an improper disclosure. If a letter be required from hence to be submitted to your Board, I will thank you, from the knowledge which is now afforded, to say what will be satisfactory.

With great respect,

I am, dear sir,

Your obedient servant,

J. A. BUCHANAN, *Pres't.*

Dennis A. Smith was then called, on the part of the state, and examined more particularly in relation to his sales of stock to the Traversers.

Having in the mean time refreshed his memory, by reference to papers and memorandums in his possession, he gave the following statement of these sales.

April, 1817. The first sale was in April, 1817, and consisted of two parcels, one of 2,000 shares, at 15 per cent adv. and one of 5,401 shares, at 20 per cent.

7,101 shares.

Those shares were chiefly pledged in State Banks at par, and were redeemed by the purchasers; who merely paid him the difference between the amount of the pledge, and that of the purchase money This difference constituted his profit, and amounted to - - $116,080 00

June, 1817. The second sale was in June, 1817, and consisted of 12,536 shares, at an advance of 36 per cent, this advance amounted to the sum of - - $451,296 00

But as part of the shares were incumbered to the amount of - - 104,719 00

That sum was to be deducted from the gross advance, and left him a profit of - - $346,577 00

which was paid, in part, by taking up a note of his for $161,214 67, which had previously been discounted for him at the Baltimore Branch.

December, 1817. The third and last sale was in December, 1817, and embraced 12,000 shares at 55 per cent advance, with the advantage to the purchasers of receiving the dividend. But the various charges amounted to about as much as the dividend, and left the price to them nearly the same. These 1,200 shares depended chiefly on contracts with various persons, to transfer the shares to him or his order, on paying the stipulated prices. These and other incumbrances the purchasers were bound to relieve, and to pay him only the difference between their respective amounts, and the purchase rate of $155 per share; which difference constituted his profit on the sale to them, and amounted on the whole 12,000 shares, to

$55,000 00

But he had previously obtained an advance from other persons, on a part of these shares, over and above the price which he had contracted to pay for them. This was

one of the incumbrances which the purchasers were to remove, by an application of a part of the purchase money. It constituted a further profit to him on these shares, and was finally realized by the sale in question. The amount was - $60,000 00

making for his whole gain on the 12,000 shares, the sum of - - - - - - $115,000 00

Mr. Smith further proved, that his stoppage of payment took place on or about the 9th of April, 1817: That very soon afterwards, and before he made any sales of stock to the Traversers, James W. M'Culloh called on him, and offered on the part of James A. Buchanan, to receive as a pledge or counter security, all the stock which he then had, being the above mentioned 7,404 shares, and to give him S. Smith & Buchanan's notes or endorsements, to such an amount as the pledge would justify, for the purpose of enabling him to resume his payments: That he expressed his thankfulness for this offer, but declined to accept it; observing to Mr. M'Culloh that he would much prefer selling the shares, at what might be deemed a fair price: and that in consequence, as he supposed, of this suggestion, the first purchase of 7,404 shares was made; which yielded him, as already stated, a profit of $55,000.

He further stated, that at the time when he made the second sale, that of 12,536 shares in June, 1817, he held no others, nor any contracts for any others; but immediately or soon afterwards proceeded to make new contracts for stock, in the belief that it would still rise; and thus possessed himself of the 12,000 shares, or rather of the contracts for them, which formed the subject of the third sale: That when he made the first and second sales, he was fully convinced, that the stock would greatly rise, and might, as the event proved, have realized a large fortune, had he retained his shares some time longer; but he was anxious to pay his debts and settle his concerns, which were various and extensive, and which he had not then the same means as formerly of managing to advantage: That when he stopped payment, his debts amounted to upwards of $5,000,000, of the whole of which he effected the settlement, by the property which he held, and the resources derived from these speculations in Bank stock; which would have yielded him a very large surplus, had he held the stock longer; but he preferred making an immediate adjustment of his affairs.

The Attorney General here closed the evidence in reply. He then remarked, that testimony had already been adduced to shew, that up to the 11th of August, 1817, inclusive of that day, loans on stock had always passed, like those on personal security, before the Board of Directors; and that on the 12th of that month, this branch of the business had been transferred, in the manner already explained by the evidence, to the President and Cashier. He would now shew the change in the state and character of stock loans which followed this transfer of power, and how that change was effected.

He then produced the books of the Baltimore Branch, which being referred to, shewed:

That on the 7th of August, 1817, the loans on stock amounted to - - - - - - - - -	$216,002 50
On the 11th of the same month, the day preceding the change, to - - - - - - - - -	314,850 00
And on the 14th of the same month, the first statement day after the change, to - - - -	857,350 00
Making an increase from the 12th to the 14th, of	$532,500 00
On the 12th of August, 1817, as had already appeared, there was discounted for S. Smith & Buchanan, a note without any endorser, on an alledged pledge of stock which never existed, for - - - - -	$540,000 00
More than the increase, by - - -	7,500 00
Thus it appeared that $7,500 had been paid by some other borrowers on stock, while these persons, by their loan to themselves, without any security whatever, but under the pretence of solid security, that of stock, increased the whole amount - - - - -	$532,500 00
It further appeared by the books, that on the 22d of August, 1817, there was discounted for S. Smith & Buchanan, a note endorsed by George Williams, on an alledged pledge of stock, which did not exist, for -	215,000 00
On the 30th of the same month, one endorsed by Hollins & M'Blair, with a pledge of the same description, for - - - - - - - - -	280,000 00
On the 5th of September, 1817, one endorsed by George Williams, on a similar pledge, for - -	165,000 00
And on the 10th of the same month, one with the same endorser, and the same sort of pledge, for -	39,500 00

Making a total, for these four notes, of - $699,500 00
and amounting, with the discount of August 12th, 1817,
of - - - - - - - - - - - - 540,000 00

To the sum of - - - - - - $1,239,500 00
which these persons had loaned to themselves, in the short period of twenty-eight days, on pretence of effective pledges of stock, but in fact without any other security than their notes.

It further appeared by the books, that on the 28th of August, 1817, the whole amount of stock loans was $1,238,950 00
of which the loans obtained by them, before that day, viz.
on August 12th, - - - - $540,000
and on 22d do. - - - - 215,000

Made up more than one half, or - - - 755,000 00

And that on the 8th of September, the total amount
was - - - - - - - - - $2,401,117 33
of which they had the above sum of - - 1,239,500 00
still more than one half.

It was thus, the Attorney General said, that the Traversers Buchanan and M'Culloh exercised the power over stock loans, with which they had vested themselves, on the 12th of August, 181 , under pretence of an authority from the Parent Board, the existence of which no attempt had been made to prove.

He also gave in evidence and read to the Court, the 22d and 31st articles of the Rules and Regulations for the government of the Offices of Discount and Deposit, or Branch Banks, which are as follows:

"*Art.* 22. The Presidents and Cashiers of Offices, shall take, and subscribe an oath, or affirmation to the following effect, to wit: I do swear (or affirm) that I will, to the best of my knowledge and abilities, perform the duties assigned to, and the trust reposed in me as of the Office of Discount and Deposit of the Bank of the United States.

"*Art.* 30. The Directors of the Offices shall be empowered to form and establish all other Rules and Regulations for the interior management of the Offices; Provided, the same be not repugnant to law, or to the Rules and Regulations of the Bank of the United States, or the Resolutions of the Directors thereof.

He then called John Donnell, and examined him on the part of the state. He proved that he was a Director of the Parent Bank

in 1817, and understood from report, but not from seeing the resolution, that discounts on stock at $125 to the share, or 25 per cent above par, were at one time authorised; but that he also understood by report, that the resolution giving the authority was soon rescinded: and that he never was present at the Parent Board, when any discount at a higher rate than par was made.

Thomas B. Rutter, the clerk employed in making out stock lists, was then called again by the Attorney General, and examined as to the length of time that was necessary for making such a list.

He proved, that if there was no error in the books, a stock list might be prepared in two or three hours; and that in case of errors in the books, he supposed it might require two days, but never more.

The Attorney General stated that the object of this proof was to shew, that the delay till November 11th, 1818, in forwarding the stock list, required by the resolution of the Parent Board of October 20th, 1818, twenty four days, was studied and fraudulent.

He also again called and examined William L. Gill a clerk in the Branch Bank, who proved that since Mr. White the present Cashier came into office, he had been employed to make out Pay Lists, or lists of Discounts on personal security, for the Parent Board; and that the time required for this purpose was from eight to fifteen days, according to circumstances.

James Beatty one of the members, and the sole surviving member, of the Committee appointed on the removal of James W. M'Culloh on May 20th, 1819, to examine the state of the Baltimore Branch, and deliver over the books papers and effects to the new Cashier, was then called by the Attorney General, and examined as to the state of the cash when this change took place. He proved that on the 20th of May 1819, there was a deficiency in the Cash of - - - - - $151,518 42

of which M'Culloh replaced in the Bank

on the 31st of May, - - - $70,000

and on the 3rd of June, - - - 231 25

——— $70,231 25

leaving a final deficiency of - - - - - $1,287 17

and that to cover this deficiency, he delivered to the Committee various notes and securities, enumerated and described in a paper which the witness held in his hand, and which he proved and presented to the court. It is as follows:

ITEMS HELD AS MONEY BY LATE CASHIER.

1819, March 11	Finley & Vanlear,	Mathew Vanlear, Keller & Foreman,	$12,500 00	8 months,	from Finley & Vanlear.	
1818, October 1	John Sinclair,	N. F. Williams, - - - - -	2,828 00	12 do. paid,	do.	
1819, March 3	D'Arcy & Didier,	check to L. Taylor on City Bank of Balt.	20,000 00		L. Taylor.	
April 6	Henry Payson & Co.	to Finley & Vanlear, - - - - -	5,000 00	6 months, paid,	Finley & Vanlear.	
March 10	Finley & Vanlear,	Talbot Jones, - - - - -	6,125 00	6 do. do.	do	
" 11	50 Tickets in University Lottery, (advanced on) - - -		1,600 00		from Dr. Debutts.	
1818, October 1	John Sinclair,	to N. F. Williams, - - - - -	2,906 00	18 months, paid,	N. F. Williams.	
" "	do.	do. - - - - - - -	2,986 00	24 do. do.	do.	
Dec'r 1	Jesse Phelps,	do. forwarded 21 May to Washington. and returned protested.	759 62	6 do.	do.	
1819, Jan'y 2	N. G. Bryson,	J. L. M'Coy, N. F. Williams, delivered Mr. White for collection 5 June,	560 06	payable on 9 June,	do.	
Feb. 18	Henry W. Gray,	endorsed by do. do. do.	561 20	4 months,	do.	
" "	James Barroll,	do. to do. do. do.	188 00	4 do. paid,	do.	
1818, Nov'r 16	M'Henry & Shaw,	do. do. do. do.	273 52	8 do. do.	do.	
" 19	John J. Harrod,	do. do. do. do.	310 00	12 do. do.	do.	
	28 shares U. S. B. stock, at par, a power to be obt'd—rec'd 3 June,		2,800 00	settled,	do.	
			$59,197 40			
May 4	A. J. Schwartze's ch. on Com. & Far. B. with a note N. F. Williams,		7,500 00		of Schwartze.	
	To secure the next above and a similar note of $13,000, there is lodged $24,000 Powh'n st. at par, as per cert. for 40 shares,					
			$66,697 40			
Nov. 19	Jacob Adams,	favor of N. F. Williams, - - -	297 00	6 months, paid,	N. F. Williams	
	Douglass & Sorrell, upon J. J. Hoogewerff, due 28 May,		488 00	do.	do.	
June 3	Handed in by Mr. M'Culloh					
	In City Bank of Baltimore, entered in the report, - - -		231 25	settled into Bank 16 June.		
" "	J. W. M'Culloh, favor of John White, cash June 3d, 60 days, to be secured by 600 shares City Bank stock,		9,000 00			
" "	G. Williams to S. Smith & Buchanan, end. J. W. M'Culloh, at 60 ds.		9,326 46			
			$86,040 11			
	Deduct cash above, entered in the Report 3d June,		231 25			
			$85,808 86			

It appears the Attorney General said, that some of these notes had since been paid, and they were so marked in the List. The rest were still due.

He here closed the evidence for the prosecution.

General Winder then offered the following additional testimony for the Traversers, viz.

A letter from J. W. M'Culloh to the Cashier of the United States Bank in reply to the curtailing order of the 19th of February, 1819, and remonstrating against it.

"*Office of Discount and Deposit, Baltimore, Feb*, 1819.

JONA. SMITH, Esq. Cashier,

DEAR SIR,

The several resolutions of the Board of Directors of the Bank of the United States under date of have been presented to the Directors of this Office for their observance. And they have instructed me to say, that they will endeavour to meet the wishes of the Parent Board in the reductions ordered, as literally as their duty to the institution will allow, having reference only, to its safety.

The aggregate amount of the reductions shall be effected as soon as may be practicable, and if possible precisely as directed. The amount reduced at this Office during the last six months is large, for our city.

But, as this is certainly a debtor city, the pressure created by a curtailment of the loans of this Office upon our Merchants is doubly great, because the State Banks must follow the example, and make equal reductions, which necessarily renders it more difficult to accomplish the views of the Board without serious injury to its debtors.

The reduction now ordered would in better times be felt. To make it with safety to commercial credit, under present circumstances, after so recent and such a considerable abstraction of capital, will require the greatest circumspection.

In the reductions upon the stock they will also have to exercise a sound discretion.

Many of the Stockholders are merchants, and in their other engagements must in common with others feel the pressure of the times. Some are considerable stockholders, and became such at high prices under peculiar circumstances; to sever these from this

property at a time when every fiscal executive and political circumstance that could tend to reduce its value is in full force and operation, might and would inflict irreparable injury on many, without benefit to the Institution, and in fact without accomplishing the intended object.

They are satisfied that every possible exertion will be made by the Stockholders to meet this call, and when this shall have been done without success, the Directors will feel not only disposed but obliged, to suspend a demand that cannot be complied with, persuaded that it is neither the wish or intention of the Directors of the Bank United States, to proceed under such circumstances to rigorous extremities against such Stockholders.

Truly your's,

Signed, J. W. M'CULLOH, Cashier."

General Winder also called the attention of the Court to J. W. M'Culloh's note of January 15, 1818, for $56,303 22, and stated that the interest on it was included in the general consolidation of November 2, 1818.

In relation to the letter from James A. Buchanan to Jonathan Smith, concerning the payment of part of the debt of the Mechanics' Bank by bills of exchange on Boston, General Winder observed, that this payment was made by advancing funds to the Mechanics' Bank for the purchase of United States funded debt, to be deposited in Boston, and drawn on at the risk of the Mechanics' Bank, which was finally credited on the payment of the bills of exchange, and provisionally credited *ad interim* with the bills. The only advantage derived by the Office was about $1,900, gained in exchange, paid to them by the Mechanics' Bank; and turning the course of exchange in favor of Baltimore, by getting credit in Boston. The Office of Discount and Deposit gained also the interest on these loans.

The following statement of the testimony of Mr. Amos A. Williams and Mr. Meredith, furnished by themselves, came in after that part of the Report which contains their testimony, was struck off. It is subjoined, to prevent all possibility of mistake or misunderstanding; and will be seen to agree substantially with that published, from the notes of Mr. Mitchell and Mr. Murray.

Amos A. Williams gave in evidence, that he had been a director for two years after the organization of the Bank: That in April, 1817, the Mechanics' Bank was indebted about $800,000 to the Office of Discount and Deposit; and that there were balances due of more or less from all the State Banks: That the debt of the Mechanics' Bank gave rise to much anxiety in the Board at Baltimore, and a committee was appointed therefrom to meet one from the Mechanics' Bank. That he, the witness, soon after perceived an important reduction in the item against the Mechanics' Bank; and on inquiring how it had been effected, was informed by either Mr. Colt or Mr. Taylor, who were both of the aforesaid committee, that they were enjoined to secrecy; but that the committee were perfectly satisfied with what had taken place. At a subsequent period he met one of these gentlemen, and on again questioning him as to the settlement with the Mechanics' Bank, was told, that he must ask no questions, as the whole affair was confidential.

That on one occasion Mr. Taylor told him, the witness, that after he had left the Bank in November, 1818, large discounts were made above 125; of which fact Dennis A. Smith had informed Mr. Donnell when going to Philadelphia in the steam-boat.

That on another occasion Mr. Colt said, he thought himself a fool for not taking a part in the purchases from Smith, but that he was afraid of the risk. This remark was after the last purchase from Smith had been made, and after the appointment of the committee above mentioned. The Board had risen, and Mr. J. A. Buchanan, Mr. Colt, and the witness, were conversing together on the subject of stock.

Mr. Meredith gave in evidence, that he was a Director of the Mechanics' Bank of Baltimore in the spring of 1817, at the time Mr. Smith, then Cashier of that Bank, suspended his payments. That in consequence of that event, a meeting of the Directors was called; at which a committee was appointed, authorised to arrange Mr. Smith's affairs with the Bank, and to adopt such measures generally, as the situation of the Bank might seem in their judgment to require. This committee consisted of Messrs. Brown, Thomas, Mayer, and the witness.

That at the period of Mr. Smith's failure, the Mechanic's Bank was largely indebted to the Office of Discount and Deposit; witness thinks that the amount was between 8 and $900,000. For the purpose of making some arrangement with respect to this debt, which was daily increasing, the committee of the Mechanics' Bank

agreed to meet a committee on the part of the Office. A meeting was accordingly held at the dwelling house of Mr. J. A. Buchanan, at which Mr. Brown and the witness, with Col. Mosher, the President of the Mechanics' Bank, attended, and there met Messrs. Buchanan, Taylor, Colt and M'Culloh, on the part of the Office.

At this meeting, the actual situation of the Mechanics' Bank was the principal subject of inquiry. Mr. Brown and the witness frankly communicated all their information upon this subject, and exhibited the Statement Book of the Mechanics' Bank. This was done under solemn pledges of secrecy. After much conversation, it was agreed that the Office should grant such facilities as it was thought would enable the Mechanics' Bank to support its credit; among which was the discount of a large amount of bills receivable, which had been transferred to the Mechanics' Bank by D. A. Smith. Other measures were suggested for the same object, but the witness does not now particularly recollect them.

A meeting was subsequently held at the Mechanics' Bank, at which J. A. Buchanan and J. W. M'Culloh, A. Brown and the witness, were present. The final adjustment of the accounts of D. A. Smith with the Mechanics' Bank, was the principal object of this meeting. Some difference of opinion arose between the witness and Mr. Brown, relative to the charge of interest, in consequence of which P. E. Thomas was sent for, and the whole account was finally closed, that is, the principles of its adjustment were agreed upon. This meeting was in December 1817, and was the last.

The amount of bills receivable transferred to Smith by the Mechanics' Bank, was about $100,000; these were discounted by the Office, and went to the credit of the Mechanics' Bank; the balance of the debt due to the Office was reduced from time to time, but was not, as witness thinks, finally extinguished until after December 1817. The reduction was gradual; and was made, as the witness believed, principally from the proceeds of sales of Bank stock by Smith to Buchanan, M'Culloh and Williams, handed over to the Mechanics' Bank by Smith in payment of his account.

Among the suggestions for the relief of the Mechanics' Bank, Mr. M'Culloh proposed that that institution should borrow six per cents, and place them to the eastward for sale. This was suggested to witness by M'Culloh, before the first meeting at Buchanan's, and was probably mentioned there, but witness does not recollect whether it was acted on.

In December 1817, the price of Bank shares at Philadelphia, was from 150 to $154. Witness knows of two sales made about that time in Philadelphia, 1,000 shares were sold by Wm. Sansom at $150 per share, and 400 by J. Whelan at $154.

At the meeting of the two committees at Mr. Buchanan's, the actual situation of the Mechanics' Bank was a matter of doubt and conjecture; it was impossible to ascertain it; apprehensions were felt and expressed for its safety, particularly as its credit had been shaken by Smith's failure. It was considered important to preserve as much secrecy as possible, and with this view witness suggested the propriety of having the bills receivable, which had been transferred to the Office, collected by the Mechanics' Bank; a measure, however, which was not adopted.

The debt due by Smith to the Mechanics' Bank, at the time of his failure, amounted, as witness thinks, to about $1,200,000.

The credit of the Mechanics' Bank continued to improve during the summer and fall of 1817, and at about the time of the extinguishment of the debt due to the office, public confidence appeared to be restored.

Mr. Meredith afterwards stated to the Court, that upon better recollection, he found that he had been mistaken as to the amount of Smith's debt to the Mechanics' Bank; it must have been much less than the sum he had mentioned.

He further stated, that very soon after the failure of Smith, he went to Philadelphia on behalf of the Mechanics' Bank, among other things to negotiate a business of great importance with the Bank of Pennsylvania. Mr. Philip E. Thomas had preceded him the day before, and was to join him in Philadelphia. When witness arrived, he found that Mr. Thomas had returned to Baltimore, leaving a letter for witness, informing him of the sensation that Mr. Smith's failure had caused in Philadelphia, and the suspicions it had excited there, as to the credit of the Mechanics' Bank.

ATTORNEY GENERAL'S ARGUMENT.

The evidence as well on the part of the State as of the Traversers having closed the Attorney General in a summary manner recapitulated to the Court the principal points on which he relied in support of the prosecution, drawing from them at the same time such deductions, as, in his opinion were just and reasonable.

He stated, that he presumed it would not be denied, that if James W. M'Culloh alone, contrary to his duty, his oath, and the rules and regulations prescribed for his government, and without a colour or pretence of authority from the Board of Directors at Philadelphia or at Baltimore, withdrew from its vaults the funds of the Branch of the Bank of the United States established at Baltimore, and appropriated the same to his own use; and by various false statements and indirect means concealed such his conduct, that he was guilty of a fraud upon the Bank of the United States; that he had defrauded them of a part of their property and effects; that he had injured them in their property: That if by combination and agreement between Buchanan and M'Culloh the same acts and outrages are committed, that they are guilty of a conspiracy at common law, for which they may be criminally prosecuted. The Court of Appeals of this state having in this cause determined, that any conspiracy falsely and fraudulently to injure another in his person, his property or his character, is an indictable offence.

He then called the attention of the Court to the charter of the Bank of the United States, and likewise to the 12th, 13th, 14th, 15th, 16th, 17th, 22d and 31st articles in the rules and regulations prescribed by the Parent Board at Philadelphia, and its various resolutions passed for the government of the Branch at Baltimore, to shew the powers of the different Boards of Directors, and the officers of the Parent and Branch Banks, and contended, that it was impossible that the Traversers could for a moment suppose, that a power to make discounts on stock notes was ever delegated to them after the 23d day of January 1817. The only authority vesting the making of discounts in the Presidents and Cashiers of the Branches of the United States Bank, is contained in the resolutions of the 18th and 27th of December, 1816, which, by express limitation expires on the 23d of January 1817. That the Traversers knew they had no power to make stock loans, was most manifest from their various letters, addressed to the President and Cashier

of the Bank of the United States, and their answers thereto between the 24th May and 25th July 1817, in answer to one of which letters the President of the Bank at Philadelphia informs the President of the Branch at Baltimore, that not even the Branch Board of Directors at Baltimore are permitted to make stock loans of any magnitude. On the 25th of July 1817, this restriction was removed, and by a resolution of the Parent Board, the *offices*, (that is, the the Boards of Directors) not the *officers* of the Branches at Baltimore, &c. were authorised to discount notes secured by a pledge of stock of the Bank, or of United States stock, at the par value thereof: and by a resolution of the 26th of August following, such discounts were authorised on the stock of the Bank, rated at $125 per share. These resolutions give no authority to the President and Cashier at Baltimore to make discounts on stock; no evidence of such authority was left in the Office at Baltimore at the time of M'Culloh's removal from his station as Cashier; none can be found in the Minute Book of the Parent Board, (where it must appear if it ever existed) although most diligent search has been made for it by the Counsel on both sides of the prosecution; none has been produced by the Traversers, they have not even attempted to offer one tittle of testimony, that they ever saw or heard of any proceeding of the Parent Board investing them with such power. This Court therefore are bound to believe it never existed. That the Board of Directors of the Branch at Baltimore ever gave such an authority, cannot be seriously pretended; the contrary is proved by every Director of that Board who has been examined in Court, and that such Board had no right to transfer such power, was as well known to the Traversers as it is to this Court. To question this, would be to do gross injustice to the very superior and distinguished talents which the accused are universally known to possess. The fact that the book containing entries of all stock loans was laid before the Board of Directors at their semi-weekly meetings, when they might have examined it if they thought proper, appears to be relied on to shew that the Board at Baltimore knew and approved of these stock discounts, and sanctioned and adopted them as their own. But no such inference can be drawn from that fact; the proof of all the Directors is, that at the time of the discounts complained of, they understood and believed, that discounts on stock they had nothing to do with; that it was executive business, over which they had no controul. And this understanding and belief arose, not because they knew or thought that they had transferred

such power, but because, as is in proof by Mr. Colt and others of the Directors, that the members of the Board, whilst in session, were informed by the Traversers, or one of them, in the presence and hearing of the other, that discounts on stock was executive business, (committed exclusively to the Traversers) and with which the Directors of the Office had no more to do than with the affairs of the Union Bank of Maryland. That the book containing a statement of stock loans would have informed the Directors of the frauds practised by the Traversers is by no means true. It is true, it contained the names of all "discounters" on stock and the amount discounted, but it also contained the false, the fraudulent entries that such discounts were secured by stock properly pledged, when in truth, as respects the discounts which the Traversers granted to themselves no such pledges of stock were ever made. Upon proof like that now relied on, this Court will not for a moment countenance the unwarrantable imputation, attempted to be cast upon the highly honorable and distinguished merchants who composed the Board of Directors of the Office of Discount and Deposit during the years 1817 and 1818, that they connived at the proceedings of the Traversers.

That even to admit that the Board of Directors at Philadelphia or at Baltimore, or both of them, had delegated to the Traversers, the power to grant discounts on stock, it would rather magnify than diminish the enormity of their conduct. Upon what terms were such discounts to be made? upon stock being hypothecated in the manner prescribed by the resolutions and bye-laws regulating such discounts. There resolutions require that to be done, without which stock cannot be securely pledged as a collateral security for the payment of a debt, namely, that the certificates of such stock shall be deposited by the borrower with the lender: if this be omitted the borrower might obtain a hundred loans upon the same stock, and the last pawnee having possession of the certificates of stock, would be preferred to all others. These resolutions therefore correctly require, that the certificates of all stock on which discounts are granted shall be lodged in the Bank with a certificate of hypothecation, and a power of attorney to sell and transfer the stock, upon failure to retire at maturity the note discounted. That if when clothed with such authority, under pretence of its execution, in violation of their general duties, the performance of which were enjoined by the most solemn obligation, and in abuse of this high and important trust especially conferred on them, they have

drawn from the Bank upwards of $1,500,000 without pledging stock for one fourth part of that amount, can their criminality in the eye of the law—can their moral turpitude be less because this especial confidence was reposed in them? That they have acted in this way, upon examining the testimony, no human mind can doubt.

Until about the 8th or 10th of August 1817, notes on stock had been regularly submitted to the Board of Directors and discounted by them as all other notes were. From that time no such notes were discounted by the Board of Directors, but such discounts were made by the Traversers (being President and Cashier,) it being as alledged confided to them as executive business over which the Board of Directors had no controul. About the 10th of August the Board ceased to make loans on stock; at that time, the amount discounted on stock was $318,000; as large a sum as it had ever heretofore been. On the 14th of August, it suddenly arose to $857,000, which rapid increase was occasioned by a note on the 12th of August for $540,000, discounted as a stock note for S. Smith & Buchanan. On the 22nd of the same month there was discounted for S. Smith & Buchanan, another stock note for $215,000. The unreasonable magnitude of these discounts, and the rapidity with which they followed the Traversers' usurpation of the power to make them, conclusively indicate the motives which induced such usurpation. They knew that the Board of Directors at Baltimore, never would have sanctioned such inordinate discounts; and the only mode by which they could command at will, for their wild Quixotic speculations, the whole resources of the Office, was by the assumption of some high executive power, professedly emanating from the Parent Board. And but too successful were they in the device to which they resorted. Whether any, or what amount of stock, was pledged as security for these two discounts, amounting to $755,000 does not satisfactorily appear. At that time no resolution of the Mother Bank authorised a discount on stock at more than its par value. Before those notes became due, S. Smith & Buchanan had four stock notes discounted amounting to $531,500, J. W. M'Culloh two notes amounting to $30,000, and George Williams one note amounting to $90,000, the whole seven discounts amounting to $651,500. It is admitted on the part of the Traversers, and also clearly established by proof, that these stock note discounts were made to pay for United States Bank stock, purchased on their joint account from Dennis A

Smith, and that but 2558 shares of stock were pledged at the Office at Baltimore to secure the payment of their stock note discounts, is both proved and admitted. It hath been alledged that to secure the payment of the two notes the one for $540,000 and the other for $215,000, an equal amount of United States Bank stock was regularly pledged at the Office at Baltimore, which was withdrawn when those notes were paid; but of this, no evidence hath been offered; and the subsequent conduct of the Traversers by no means warrants such an inference in their favour. That suppose this, their allegation to be true, when they retired these notes, their stock loans at this Office amounted to $651,500, to secure which there never were either then or afterwards more than 2558 shares of United States Bank stock, which at $125 per share amounts to $319,650, leaving a balance of upwards of $300,000 wholly unsecured by any stock pledged; at the very moment they were withdrawing from the Bank the certificates of stock amounting to $755,000. Conduct like this can admit of no extenuation.

It may be contended, that as these Defendants had pledged 18,290 shares of stock at the Parent Board, to secure discounts thereon for the most part at their par value, that this stock was pledged at $125 per share advance above the par value, as a security for the money drawn out of the Office at Baltimore. Nothing is farther from the fact. Had that been the case, a certificate of hypothecation for such stock to secure the payment of the Baltimore discounts would have been lodged in the Bank at Philadelphia or Branch at Baltimore; it is not even insinuated that any thing of the kind ever was done. The same remark will apply with still greater force to the stock stated to have been pledged at par in London, Liverpool, New York and Boston. The plain truth is that for $1,540,000 drawn from the Office at Baltimore, the only pledge ever made for its security was 2558 shares of United States Bank; on which they discounted upwards of $600 per share although they well knew that the utmost extension of their powers was restricted to $125 per share. This fine parade of upwards of 40,000 shares of United States Bank stock pledged at Boston, New York, London, &c. being also a pledge to secure the debt due at the Baltimore Office, never entered the imagination of any human being, until the Traversers had exhausted their matchless ingenuity, in efforts to conceal their misconduct from the Boards of Directors at Philadelphia and Baltimore. When false entries, false statements and false explanations were no longer effectual to

mask the hideous deformity of their transactions; then it is that they resort to the mockery of a justification, that stock pledged at London, Liverpool, New York, &c. on which they had borrowed every dollar that any prudent man would advance upon it, was an adequate hypothecation of stock for their debt contracted at the Branch Bank at Baltimore.

That granting to these Traversers the full benefit of the absurd and ridiculous pretence, that every share of United States Bank stock, in which they profess to have an interest, in any part of the habitable globe, is secured to the Bank of the United States, and is legally and bona fide hypothecated for this debt due at the Baltimore office; are they then freed from the charge for which they are now on trial? Unquestionably not. The utmost extent of discounts on United States Bank Stock ever warranted by the Mother Bank, was at $125 per share. Over and above this $125 per share upon all stock claimed by the Traversers in any part of the world, without even a colour of authority, they admit in their statement delivered to the Committee of the Board of Directors at Philadelphia, that they had drawn out of the Baltimore office, as a loan on stock, $318,350. For this outrage no attempt has been made to offer an apology. This excess they have admitted in their settlement with the Parent Board: but by reference to the books of the Office it will be seen, that they were indebted at the Office at Baltimore in a much larger sum on stock loans than $1,540,000, a part of which they omitted to include in their settlement. That as respects the resolution of the Parent Board of the 26th August 1817, it was rescinded about ten days after its adoption, and that fact, a matter of public notoriety, was well known to the Traversers.

The Attorney General further stated, that having endeavoured (and he believed successfully) to shew that the Traversers, without the colour of authority, had fraudulently and by false pretences, by combination and agreement between them, in violation of their duty and every obligation which they were bound to hold sacred, defrauded the Bank of the United States by embezzling their funds at the Branch Bank at Baltimore to a very large amount; he would now proceed to shew, that they had attempted to conceal such fraudulent embezzlements from the Boards of Directors at Philadelphia and Baltimore by divers false entries and statements, in the

books of the Office, and by other indirect means and artful devices. That to do this he first submitted to the court the discount book containing the entries of all notes discounted on stock, in which it is falsely stated that the various discounted notes of the Traversers, which have been offered in evidence, were secured by a pledge of stock of an amount equal to the amount of such discounts, in the manner and according to the estimated value of such stock as established by the resolutions of the Parent Board; when in truth and in fact the Traversers had made no such hypothecations of stock. He then shewed that similar false entries were made in the Credit Book or Discount Ledger, which together with the Discount Book are laid before the Board of Directors at Baltimore, for their inspection at their semi weekly meetings. That similar false entries and statements are contained in the statement books presented to the Board of Directors at the Office twice a week for their inspection, which purport to state the amount of loans for which stock is duly pledged as a security, whereas, for the discounts which the Traversers made for themselves, and which are inclosed in said Statement Books, little or no stock was ever pledged. A copy of which statement of stock loans, as contained in the Statement Books, was by James W. M'Culloh, regularly transmitted once a week to the Board of Directors at Philadelphia, and laid before them for their inspection. When the Board of Directors at Philadelphia, in consequence of suspicions, but too justly entertained, on the 20th October 1818, passed their resolution (which was forthwith transmitted to the Cashier of the Office at Baltimore, and by his letter of the 26th October, its receipt acknowledged and compliance promised) requiring the cashiers of the several offices to transmit to the Parent Bank, a statement of stock notes discounted, with the names of drawers and indorsers thereof, and the amount and description of stock pledged; why was not this requisition at once complied with? why this unreasonable delay in obeying this most reasonable mandate? Did it require twenty five days to make out this list? Mr. Rutter the clerk, usually employed in making out such lists, has proved that under any circumstances, all erroneous entries, if any, might have been corrected; and a correct list as demanded made out and put into the Post Office in two days. The reason of this delay then is obvious; the Traversers were alarmed at this unexpected requisition, they knew that if a true statement of the amount of their discounts on stock were taken from the Books of the Office, and transmitted, that all

their nefarious practices would at once appear to the Parent Board, and their fall and disgrace by inevitable. They therefore delayed a compliance with the requisition as long as they could, and when urged and coerced to obedience, what statement did they make?— A faithful transcript from the books of the Office? By no means; by a false and fraudulent entry then made in the day book, they on the 14th of November 1818, caused it to be stated that errors had been committed in entering notes discounted on personal security, as notes discounted on stock to the amount of $852,683 64. And this sum was deducted from stock loans, and charged to discounts on personal security, and stock lists sent on accordingly to Philadelphia. No entry was then made; none has been since made on any book of the Bank, to shew what particular discounts had been erroneously carried to stock loans, instead of to discounts on personal security. And from the manner in which those discounts are made and entered, it is utterly impossible that such a mistake could have been made. Discounts on personal security are made by the Board of Directors; discounts on stock are made by the President and Cashier; discounts on personal security are entered in one book by one clerk; discounts on stock are entered in another book by another clerk. Notes offered for discount on personal security are always entered in the offering book, and ticked off by the Board of Directors as they are discounted at the Board; notes discounted on stock are never entered any where until after they are discounted, when they are delivered by the Cashier to the proper discount clerk, who makes the necessary entry in the stock Discount Book, under the direction of the Cashier. That what put this question beyond all controversy, is, that the amount of this alledged error was deducted from the amount of the stock loans of the Traversers, which discounts or loans were renewed as such, on the 12th of November, 1818, three days after the letter of James W. M'Culloh to the Cashier of the Parent Bank, of the 9th November, 1818, which was written to pave the way for that sameful fabrication which was to follow it. Which letter of the 9th November, states, but most falsely, the discovery having been made that "entries have sometimes been debitted to loans on stock, which should have been to bills on personal security, and vice versa." These letters of James W. M'Culloh of the 9th and 14th of November, 1818, with the stock lists accompanying the latter letter, cannot be viewed otherwise than as false and fraudulent devices and statements made to deceive the Parent Board, and to

conceal from them the nature and situation of the stock discounts obtained by the Traversers at the Branch Bank at Baltimore. Of the same character are the stock and pay lists delivered by the Traversers to the Board of Directors of the Bank at Philadelphia, bearing date the 8th of March, 1819. The Attorney General stated that in offering the testimoney relative to these lists, he had proved to the Court, that by the stock list S. Smith & Buchanan, are stated only to have had two stock notes discounted, one for $97,875 and the other for $137,500 amounting to $235,375, whereas by all the books of the Bank, it appeared that they had six stock notes dated the 2nd of November, 1818, and discounted on the 12th, amounting to the sum of $798,501 77. That by said stock list, it appeared, that George Williams had two stock notes discounted, one for $221,875 and the other for $188,150, amounting to $410,025; whereas by the books of the Bank, it was most manifest that George Williams had but one stock note discounted, amounting to $169,833 34 That James W. M'Culloh appeared by said stock list, to have had but one stock note discounted, and that for $3,100 on 34 shares of United States Bank stock pledged at their par value. Whereas it conclusively appeared that M'Culloh was indebted to the Office at Baltimore for sundry stock notes discounted for his accommodation, and which had been from time to time renewed by him, and were then unpaid to the amount of $574,001 01. That by the pay list, and the last three items in it too, which list is a statement of all notes discounted by the Board of Directors at Baltimore, it appears that S. Smith & Buchanan had three notes discounted for the following amount; $251,250—$325,000 and $318,350, amounting to $894,600. Whereas no such notes are to be found in the Offering Book, which contains a list of all notes submitted to the Board of Directors for discount; nor in the discount book, which contains a statement of all notes discounted by the Board of Directors. And it is moreover proved by the Directors themselves, that no such notes ever were discounted by them. That it also appeared by the account current of S. Smith & Buchanan, kept with said Bank, that the discounts of no such notes were ever carried to the credit of S. Smith & Buchanan, except the note of $325,0000, which was one of the stock notes discounted on the 12th November, 1818, (being a renewal of former stock notes discounted for them) and regularly appearing as such upon all the books of the Bank, where it ought to be found. Of the two notes appearing on the stock list as dis-

counted for S. Smith & Buchanan, no trace whatever is to be found, on any book of the Bank, of the note for $137,500. That the two notes appearing on the stock list to have been discounted for George Williams, appear in no book of the Bank, and the proceeds of such notes never were carried to the credit of George Williams, which they indubitably would have been, had they been discounted for him.

It might be asked what was the object of the traversers in thus fabricating notes apparently at pleasure? By adverting to the situation of Buchanan, M'Culloh and Williams, and a few facts disclosed in testimony in this cause, the mystery will be at once revealed. Every thing depended on M'Culloh's retaining his office; whilst he maintained his station his friends could not sink. But the converse of the proposition was not equally true. Buchanan and Williams therefore consented to step into M'Culloh's shoes, receive upon their shoulders the burthen of his transgressions, whilst he was to appear before the Parent Board, wholly unconnected with their stock-jobbing transactions; as a borrower upon stock only to the amount of $3,400, and that amount secured by a pledge of 34 shares of U. S. Bank Stock at their par value; and the nature of these loans upon stock to Buchanan and Williams, and upon personal security to S Smith & Buchanan were to be explained to the Parent Board by Buchanan and M'Culloh in person, in such a way that, had not the falsehood of these explanations been discovered, they would have been deemed satisfactory, the office in Baltimore left in the hands of those who then managed its concerns, and most probably the utter ruin of the Bank of the United States would have been the consequence. It appeared by the stock list of the 8th March, 1819, that S. Smith & Buchanan and George Williams were accommodated with discounts on stock notes to the amount of $645,400, and to constitute this sum fictitious notes were inserted in the list. It may be enquired, why was this particular sum of $645,400 selected as the amount of stock loans? The answer is obvious.—There were pledged at the Office in Baltimore 2558 shares of U. S. Bank, which at $125 per share amounts to $319,750, and in the mother Bank there were pledged at par 13026 shares; a discount of $25 additional per share on which would produce $325,650, which two sums added together make the precise sum of $645,400, the amount stated by the list to be discounted for Buchanan and Williams on stock; thus their discounts on stock appeared never to have exceeded $125 per share. This last mentioned amount sub-

tracted from the $1,510,000, admitted by the traversers as the amount of their stock note discount at the Office at Baltimore, leaves $894,600, the exact amount of the three notes stated in the pay list to have been discounted for S. Smith & Buchanan on personal security. To have shifted the responsibility of having discounted these three last notes from the traversers to the Board of Directors at Baltimore, with such plausible, though false, explanations as Buchanan and M'Culloh were prepared to give of the origin of these notes, was surely the most ingenious and favourable aspect in which the conduct of the traversers could be presented to the Board of Directors at Philadelphia; and these explanations are what the counsel for the accused triumphantly declares will be their complete justification both in the eyes of God and man; that instead of a criminal prosecution, they deserve the lasting gratitude of the Bank of the United States, in having patriotically thrown themselves into the breach and saved the Bank from a loss of $800,000, and the public from inconceivable sufferings and distress. This they stated as their defence; that but for the purchases made by them of Dennis A. Smith of the stock of the Bank of the United States, the Mechanics' Bank of Baltimore would have been insolvent and wholly unable to pay a debt of $800,000 due to the Office at Baltimore.—Need it be asked whether such defence has not wholly failed in proof? nay, has it not been conclusively disproved by the testimony offered on the part of the State? As proof of the latter, the Attorney General presented to the view of the Court the testimony of Alexander Brown, R. L. Colt and others, shewing that there never was any apprehension for the solvency of the Mechanics' Bank of Baltimore after the 24th of April, 1817, when the committees from that Bank and the Office had their meeting relative to the debt due from that Bank to the Branch Bank at Baltimore.

Arrangements perfectly satisfactory were then made for the extinguishment of this debt, which were carried into execution without difficulty, and the credit of the Mechanics' Bank remained unimpaired. He also shewed that the first purchase of stock made by the Traversers of D. A. Smith, was after the Mechanics' Bank had made its arrangements with the Office. That of the two first sales of stock by Smith to the Traversers, amounting to upwards of $2,500,000, little or no part of the proceeds was applied to the payment of the Mechanics' Bank debt. That long anterior to the purchase made in December, of the 12,000 shares of United States Bank stock, the standing debt of the Mechanics'

Bank to the Office, was considered as at an end, the balance due being about $100,000, a much less sum than was then due by many if not most of the Banks in Baltimore, as would appear by reference to the statement book of the Office, various entries in which were refered to. The Attorney General then closed his remarks, by reading a letter from J. A. Buchanan to William Jones, president of the United States Bank, dated on the 25th of April, 1817, the day after the meeting of the Committees, giving an account of the proceedings of the Committees, and concludes by stating "that a full, free and unreserved interchange of opinion took place, the result of which is, a satisfactory conviction to our minds that the Mechanics' Bank can sustain no loss by Mr. Smith," "and we entertain no apprehension for its safety or reputation." "Measures are in train which will produce to us this day a payment of four hundred thousand dollars." And also read another letter from J. W. M'Culloh to Jonathan Smith, Cashier of the United States Bank, dated June 23rd, 1817—and likewise a letter from J. A. Buchanan to Jonathan Smith, bearing date the 31st of October, 1817, in which Buchanan writes that by the arrangements made with the Mechanics' Bank, which had nothing to do with their purchases of Bank Stock, we "have reduced the very heavy debt due us to almost nothing. We have done more. Our account with Boston and New-York, has been considerably relieved, and the Mechanics' Bank is of unimpaired credit." These letters demonstate the absurdity and falsehood of the grounds on which the Traversers have, in a great measure, rested their defence.

GENERAL WINDER's ARGUMENT

FOR THE TRAVERSERS.

He had until now anticipated the pleasure of carrying with him even the gentlemen who were opposed to him; but it appeared that they were pleased with escaping from a conviction of the innocence of the Traversers, and even exulted in his supposed defeat. Still, however, he would not give up the hope of convincing them, if they could view the circumstances of the case in their true light, uninfluenced by any prejudices which they might have imbibed, as counsel for the prosecution.

He would endeavour as distinctly as possible, to shew to the court the deductions which should be drawn from the mass of evidence that had been offered on either side: And however great the ingenuity exerted on the part of the prosecution, to impress the idea of the guilt of his clients, he hoped that the court would presume them innocent, until there was proof positive to the contrary.

The indictment charged the Traversers with a conspiracy to cheat, and to embezzle large sums of money for their own use, without paying any interest; and with using for that purpose subtle devices, false enteries, &c. &c. He knew his duty to the court and to his clients too well, to appear there for the romantic purpose of defending them against conjectural charges. This was a charge to cheat and embezzle by the means stated in the indictment. No doubt the grand jury had evidence before them, which justified them in finding the bill containing this specific charge: but this court never for a moment could suppose, that they had evidence of an actual conspiracy, or of any agreement in fact between these parties: It must have been merely an inference drawn from the circumstances detailed in the indictment, that there was a conspiracy to obtain a large sum of money, by the means there set out. Unless there was evidence given of the identical conspiracy for which the bill was found, the court must pronounce the Traversers not guilty; although a similar offence, but which was not indentical, might be proved; since there was no use of identity in the description of a crime, if the prosecutors may cut it loose from all the indications given in the indictment. It was the duty of the court to mitigate assuage and restrain crime. If A conspired to burn the banking house, although it was a conspiracy to injure, still it was not such a one as was charged. If we cut our-

selves loose from the indictment, we would at once put the party in jeopardy, when the law delights in protecting him. The Law abhors that the trying court should hear evidence, which proves a crime different in its nature from the one before the grand jury. These remarks, General Winder continued, would hereafter be applied to the over drawings. If the grand jury were to set out the means by which the conspiracy was accomplished, although not obliged to do so, the party came into court to meet those means which afforded an inference to the grand jury, and he ought not to be surprised by hearing others advanced against him, of which he had received no notice. He would now call the attention of the honorable court to the facts of the case; and first, to the evidence relating to the connexion between the Mechanics' Bank and Dennis A. Smith; as it was contended, that the operations on which the indictment was founded, began with the debt of that Bank to the Office, went on with it, and ceased with it. From this evidence it was inferred by the prosecution, that the Mechanics' Bank never was in danger, and that no fears for its solvency were ever entertained. This inference, he continued, did indeed appear very extraordinary. It was proved by the testimony of Mr. A. Brown, that D. A. Smith owed the Mechanics' Bank in April 1817, $600,000, and the subsequent discovery of a further debt of $400,000, made the whole amount to $1,000,000. The impression of Mr. Meredith was, that the debt was $1,200,000, and it was ascertained in truth to be nearly one million of dollars. This was in April. Mr. Dennis A. Smith's vast and beneficial operations during the war, and his subsequent unfortunate commercial transactions, caused his failure; at which time he was indebted $5,000,000, all of which was discharged and adjusted in the space of one year. It was a national matter to sustain a man whose obligations amounted to $5,000,000. He suspended payment in the month of April, with means scattered, involved and complicated to such an extent as to be nearly useless. Immediately on this debt to the Mechanics' Bank becoming public, all persons having claims against it would have pressed for payment. The capital of the Mechanics' Bank was $600,000, and the Bank of the United States held the lash over this and all the other Banks, to compel them to pay specie or close their doors. This was the situation of D. A. Smith with the Mechanics' Bank. What was the situation of the Mechanics' Bank with the Office of Discount and Depo-

sit? He (Gen. W) would now call the attention of the court to the situation of the Mechanics' Bank during the year 1817.

1st. As to the general statements. On the 24th April 1817, the day of the meeting of the Committees, the Mechanics' Bank was indebted to the Office of Discount and Deposit, $713,670, and a daily balance of $25,405, making in all, $739,075. It was said nevertheless on the part of the prosecution, that the Mechanics' Bank was then in no jeopardy, although it was known that D. A. Smith owed it $600,000, and that it was obliged to curtail daily to meet the approaching exigency of specie payments; besides, as we may safely presume, being indebted to all the Banks in the city, and many elsewhere. If then the Committee from the Office of Discount and Deposit stated that it was "in no jeopardy," the expression must not be taken in a literal sense; for it is impossible that such intelligent merchants, as those composing that committee, should have meant it to be understood without some modification. Suppose that the Mechanics' Bank had paid one half of its debt; there would still have remained due to the Office near $400,000; and after such an abstraction of funds, where was the money to be obtained to satisfy its other creditors? In their report, the Committee did not mention the means which ensured the safety of the Mechanics' Bank, and it must have been a hasty deduction for them to suppose, that it was safe to creditors but not to stockholders.—They also made no mention of D. A. Smith's payment to that Bank, which was to enable it to make payment to the Office of Discount and Deposit; for it was utterly impossible to suppose, that the Mechanics Bank could pay its creditors, unless D. A. Smith first paid the Mechanics' Bank; otherwise the office could only have expected a proportional payment; or even if it had been able to satisfy the office, it would have been bandkrupt as to its other creditors. Suppose then, Gen. W. continued, that the committee took Dennis A. Smith's situation into view, and his probability to pay the Mechanics' Bank, and you had a sufficient basis for their opinion that it was no jeopardy, "without a ghost to tell you." If they believed that Dennis A. Smith would pay the $600,000, then it certainly was not a rash and unfounded judgement; for then the Mechanics' Bank would be solvent. As to specie payments, these had been resumed to individuals before April; although between the Banks themselves they were deferred until 1st July, 1817, and constituted the most pressing claims on the Banks.

On the 26th of April 1817, the Mechanics' Bank owed to the Office of Discount and Depoist, $823,087
On the 28th of April, the first discount obtained by the Mechanics' Bank, 300,000

$1,123,087

This discount was applied to purchase bills of funded debt to be sent to Boston; so that in fact the debt was increased, because the money obtained was not applied immediately to its extinguishment. On the 1st of July 1817, the debt of the Mechanics' Bank amounted to $469,804; on the 24th December 1817, was $173, 953 10. In that month the exchange operations had entirely ceased, and there was a discount debt of $150,000, making the whole amount $323,953 10. On the 8th of January 1818, the Mechanics' Bank discounted at the office a note of $50,000. Hence it appears, that the debt of the Mechanics' Bank in April was $823,087; reduced in July to $469,804, and in December to $323,953 10; and Dennis A. Smith went on with funds obtained from the Defendants, by his sales in April and June, to pay through that year.

In the second place, he (Gen. W.) would examine into the reasonableness and probability of the foregoing deductions.

The only means suggested to Dennis A. Smith, to enable him to go on, was the sale to the defendants of 7404 shares. But it is objected on the part of the prosecution, that the funds did not go straight into the office. The Attorney General gratuitously assumes, 1st that the exclusive object, of these operations was to save the Office of Discount and Deposit from loss; and 2d, that Dennis A. Smith was willing to sell his stock, without caring to what purpose the proceeds were applied. If these suppositions were true, what temptation could Dennis A. Smith possibly have had to make the sale to the defendants? His object was to continue payment. He wished to meet other engagements, and save his funds from being seized and sacrificed. He alone knew how to relieve himself from his burthens, and of course should have had the disposal of the funds arising from the sales. His object was not merely to pay the Mechanics' Bank. His estate would not have done more than that, instead of paying $5,000,000, had it been put into the hands of Trustees and others to be sacrificed. By means of the sales to the defendants he was enabled to go on. It is further said by the Attorney General, that these shares were Dennis A. Smith's own property; if so, I think, it is a miracle if they were not pledg-

ed up to their ears; certainly they were pledged at par although not to their full value. The profits on the first sale were $140,000 which enabled Mr. Smith to resume his payments. The Defendants had his situation in view in April 1817, and had they applied the whole fund to the payment of the Mechanics' Bank, it would at once have defeated their object, and prevented his meeting any other engagements.

The only information given to the board by the committee was, that secrecy was enjoined, but that affairs were going on prosperously. But if the committee were in fact satisfied, as they stated, that the Bank was in no jeopardy, why this silence? Secrecy is a part of every system to support a tottering Merchant or a tottering Bank.

No power, no authority was given to the President and Cashier to purchase bills to remit to Boston, a part of this arrangement which they alone executed, other than was given to purchase stock; yet no complaint was ever made of want of power to send the bills and remittances to Boston. How came the debt to swell, General W. asked, between the 24th and 28th of April, unless by the purchase of the bills for Boston. This was satisfactory to the committee, and the Board would not enquire further because of the injunction to secrecy. Hence General Winder inferred, that the committee knew of the agency of the President and Cashier in both instances, as well in the purchase of this stock as of the Boston bills.

Friday Morning, April 5th.

GENERAL WINDER IN CONTINUATION.

The charge to the Mechanics' Bank was merely nominal, because the Office of Discount and Deposit had the bills and funded debt as good security for the discount of $300,000; and if they had been lost, the debt would been increased to that amount. The discount, was credited to the debt, but the Mechanics' Bank was charged for the amount advanced for bills &c. so that the credit was in fact only nominal. The whole operation ended in July, and all discounts afterwards were different from the line in the statement book. He (Gen. W.) had selected the three periods of April, June and December, in speaking of the debt of the Mechanics' Bank to the Office, because they corresponded with the dates of the sales of Dennis A. Smith, and explained the way in which the payment of his debt to the Mechanics' Bank affected the Office of Discount and

Deposit. The Office was compelled to received the notes of the Mechanics' Bank as a Specie paying Bank, and thus accumulate the debt, or it would have defeated the very object of its measures, and forced the Bank to close its doors. No other Bank was obliged to negociate with the Office, none so hopeless. We might then, General Winder continued, safely assume, that the Mechanics' Bank was in a very dangerous situation, and that in order to relieve it the office discounted Mosher's note, and made other efforts: and also, that the advances for funded debt and Bills of Exchange were made in the same manner as the purchases from Dennis A. Smith, without consulting the board, by the Executive Officers. The memory of Mr. Colt on the present occasion was rather short, as he had himself actually sold one of the bills, and made out bills for the Olivers for another.

The general operations went on without a meeting of the Committee; the effective instrument being the payment to D. A. Smith, which affords strong presumption that the Committee knew of these transactions.

With regard to the positive proof on the subject, General Winder said, he would show that these purchases of stock were made with the knowledge of the Committee. The evidence of Mr. White, Mr. Beatty and Mr. Finley proved, that in March 1819, the president took the pay list and explained to the Directors the cause of making the purchases, and his intention to go to Philadelphia in order to satify the Parent Board. All these explanations were given to the Board in Baltimore, and General Winder adduced Mr. Colt's approbatory expressions in support and vindication of the conduct of the Defendants, with regard to the purchases. Mr. Colt's testimony was in conflict with that of five other witnesses; but he, (Gen. W.) would not discuss the comparative credibility of these witnesses, with one whose feelings were certainly deeply involved in the prosecution; especially where Mr. Colt's testimony was merely negative, and that of the others affirmative. That the board then, were notified of these purchases by the president, was proved by five witnesses, and that they met with the approbation of Mr. Colt and Mr. L. Taylor, members of Committee, is proved by two witnesses; besides, if they were not approved, why was not an investigation called for? The president stated that the purchases had grown out of the conference between the Committees from the Office of Discount and Deposit, and the Mechanics' Bank, and had been made with their concurrence.—

By not calling for an investigation, the Committee concurred in the fraud and deception, if any, which was practised on the Board: Hence, he (Gen. W.) inferred, that the President and Cashier did what they believed to be a fair execution of the views of the Committee. If this fact is material, or if the evidence is weak, the court or jury might doubt the extent of the recollection of the witnesses, but ought not to say, that the Committee were ignorant of the circumstances; for, at least, such is not positively proved on the part of the prosecution, and negative testimony merely should not be received as proof.

He (Gen, W.) did not pretend to say, that the Defendants had no interest in these purchases; for it would be romantic to suppose they would have adventured thus without any view to their own emolument; on the contrary, the gains on the stock purchases from D. A. Smith, would have amounted to $900,000 clear.

A mingled motive, Gen. Winder continued, entered into all great transactions for the benefit of mankind. The Defendants expected to make vast profits; and was not that a strong justification when the money taken from the Bank was secured by pledges of stock, which it was expected would increase in value? It was a forced construction, made to impute guilt, to say that their object was to cheat the Bank out of the interest of the money, when the fair construction was in favor of innocent intentions.

It is said also, that although they did not conspire with an actual intention to defraud, yet as it was one likely to be injurious in its consequences, it must therefore be considered as a fraud. God forbid that such should be the rule of Criminal of Law. That if a man exceeds his authority in the exercise of discretionary power, and his speculations turn out unfortunately, he shall be held criminal, although there was no intention to defraud. There is a legal fraud in a civil point of view, but not under the criminal law. Nothing is said by the court of Appeals, which can convert an action destitute of fraud into origin, to a crime by its consequences.

The Defendants could not have had any fraudulent intentions, or they would not have recorded the loans in every book of the Bank where they might be seen by all. Not only were they recorded in the ledgers, but in the very books which were brought before the Board. The Statement Book—Offering Book—Credit Book—each particular name and sum; and although no detail of the security was given, yet all was done that could be required of the Defendants. If this doctrine was sanctioned by the court, no

tws partners could become indebted and aftewards fail, without being indicted for a conspiracy; especially if their security had been insufficient. A Trustee, Curator, Depository or Commission Merchant, could never appropriate money in his hands, however confident of success, without being indicted for a conspiracy on his failure, if there were more then one concurred. All Commercial Houses, Commission Merchants, &c. deposit the proceeds of cargoes in the Bank with their own money, and check upon it: and how many houses when they fail are indebted in this way; and yet, under the doctrine contended for, they would all be indictable. It is said to be like a case of forgery; but I do not admit the law, that a forgery made in a jocular manner, and used by another for the purposes of fraud, is subject matter for an indictment. There must be an actual intention to defraud. The very act there is punished. But here it is contended that the consipracy need not be proved, but may be inferred from circumstances which admitted of two constructions—And shall the law say that such circumstances sufficently prove the iniquity of the intent? In forgery the very act of making must be proved, not so for a conspiracy.

The Defendants were charged in the indictment with taking money, purposing to use it without the payment of interest—All discounts, however, by the Defendants, appeared to have been regularly deducted at the times of renewal. Conspiracy must have existed at first; and of course, subsequent false statements are no evidence of a previous conspiracy. This applied to the pay lists and stock lists. The details were always stated in the credit book, and the aggregate was every day laid before the Board in Baltimore, and sent weekly to Philadelphia. All the entries were continued unaltered after the transfer of $852,000, and were exhibited to the Directors as well after as before. The transfer was carried into the general ledger of stock loans, and this book was not brought before the Directors, so that the alteration there could not deceive them; and the statement book never gave any details of the borrowers, but showed the augmentation of note list, and demunition of stock line in a day, between the 12th and 16th of November to be $852,000. This certainly could not escape notice, when the Board knew the amount of their discounts; it rather invited the Directors to examine into the other books to see if all the entries had been truly made. How then could it conceal from or impose upon the Board in Baltimore. Could the court gratuitously suppose it contrived to produce aneffect, which it manifestly

could not produce. The debt was secured in the same manner both before and after the alteration in the books. The fact of the alteration was before the Board and explanation invited by it. A Committee was named to inpect the affairs of the Bank, consisting of Mr. Colt, Mr. Hoffman and Mr. M'Kim. Mr. Colt declared that his suspicions existed at the time, and the tart reply which he attributes to one of the Defendants, he must have received from some other member of the Board in a jocular tone.

There could have been no motive for deception in this, as the board in appointing the committee only acquiesced in the demand of the Cashier, J. W. M'Culloh. Why did not this committee meet and enquire? If interrupted by the committee of Congress, could it not have met afterwards? Various conjectures might be made as to the motives for this change, consistent with the innocence of the accused; and ought to be made, if possible, rather than the inference of criminality.

The transfer entry was continued until March 1819, it is said, when the defendants announced to the board their intention of going to Philadelphia, to make the same explanations there, that had been made in Baltimore. If such was really their design, if their purpose was to explain in this manner, then how were the stock list and the pay list means of deceit? Or could it be supposed for an instant, they would have imposed upon the Parent Bank? They were kept in the condition they had always been, in consequence of the transfer entry, and corresponded with it. Either alone would have imposed on them, but with the explanations neither could have deceived the Directors.

It is admitted that verbal explanations were given to the board in Philadelphia, but denied that they were the same as those given in Baltimore. The inference, however, is more probable, that they were precisely the same, and that the statement x in writing was there exhibited. This expression ought not to be construed as rigidly as an act of Congress. The word verbal might embrace the paper x, for the paper was insufficient explanation by itself, and so were all verbal explanations when unaccompanied by the paper. It must therefore be understood that the verbal explanations were given, and the statement x exhibited to the Present Board; as on the 30th, if not the 16th of March, it was before the Directors. The presumptions of the Attorney General to the contrary, were gratuitous, and not supported by the evidence which had been received. If then, either on the 16th or the 30th of March,

made an exposition of the true state of affairs, the pay list and stock list could not have accomplished any of the purposes for which it is said they were intended; as the debt of the defendants to the full amount of $1,540,000 appeared upon the face of them. There was no concealment for the purposes of fraud, for they were obliged to ask indulgence from the Parent Board. They informed it, that they were debtors on personal security, and not on stock; which made however no essential difference, as security had to be given in the end. This statement was admitted by the Directors of the Parent Bank to be true, and upon that basis they unanimously agreed to treat with the defendants.

Assuming then, (General W. continued,) all the facts there set forth to be true, he found that the defendants had became debtors to the amount above mentioned, by loans on stock; and that on the 30th of October the board directed the very notes on which this prosecution rested to be delivered up to these men, fairly settled. Was it not then too much, after such a settlement with creditors, to say, that this money was taken out of the Bank with an intention to defraud? Was it not placing the transaction in a false point of view?

There was indeed defect of authority. They had no literal charter for their conduct. But it was a discretionary power which was honestly exerted, never concealed, and always appeared spread in the Books of the Bank, from beginning to end.

And now the prosecution ask to carry the Court back to the total blasting of character by such terrible———. He would not look into the consequences. The doctrine which was contended for by the prosecution, if sanctioned by the Court, would be most likely to affect the most honorable men, who conscious of the integrity of their motives, act with a careless confidence. The Court might attribute as much indiscretion as they pleased, but should pause before they attributed———. He (General W.) hardly knew how to approach or leave the subject, it was so awful in its consequences. If he should be mistaken in his views, if he should trespass, he hoped the honorable Court would indulge him, when they considered the deep deep responsibility under which he stood. The defendants had been plunged from the highest pinnacle of wealth, and were now under an infamous imputation. He asked the Court to look back, and see the many causes which led to this desolation and misery. How did the Bank become a looser? Could

the defendants ever have supposed that they were about to inflict loss on the Bank and ruin on themselves, by the last purchase from Dennis A. Smith? If they did not believe it, they could not have intended it. Adverse circumstances had depressed stock, when, if it had risen, the defendants would have been looked upon as nobles, as the architects of their fortunes, by the very men *who now* prosecuted them, and landed to the skies as possessing spirits fraught with enterprize.

France, a short time before the period at which these transactions took place, made an immense loan from England, which diverted the funds that would otherwise have been appropriated to *the purchase of United States Bank Stock in England, and* made it a drug in the market. The appointment by Congress of a Committee of enquiry completed the catastrophe. Did the Bank afterwards pursue the proper course to heal the wounds. Its strange administration was an *incubus* upon it, and was another cause of depreciation of its Stock, so that, in fact, the Bank itself occasioned *the losses upon which the present indictment* was founded.

After summing up the principal points in his argument, General Winder concluded.

GENERAL HARPER,

IN REPLY.

My learned friend, may it please your honors, who has conducted the defence of the Traversers with so much zeal and ability, remarked in the commencement of his very eloquent address, that the counsel for the prosecution seemed not only to be convinced of his failure, but to view it with exultation. As far as I am concerned, and I am sure that I may answer for my learned colleagues also, I can assure him that he has wholly misunderstood our feelings. For myself I can say, and I feel confident that I may say for them too, what I have already had occasion to say in the progress of this cause, that I take pleasure in no man's punishment, still less in any man's guilt; and that if the testimony adduced by the Traversers had made the impression on my mind, which it appears to have produced on the minds of their counsel, I should have hailed the conviction of their innocence with at least as much exultation, as he supposes me to feel in the contrary belief; and should have proclaimed it here and every where else, with the highest satisfaction.

Instead of exultation I feel grief and disappointment, in their total failure to exculpate themselves, either in a legal or moral view, from the charges contained in this indictment. It is not, however, their punishment or degradation, but their guilt, that I regret: for it is a wise and beneficent ordination of Divine Providence, indispensible for the government of the world and the maintainance of civil society, that loss of character, loss of station, remorse, and mental if not corporeal suffering, should follow the proof, and oftentimes the mere consciousness, of crime. Human tribunals sometimes fail to detect guilt, either through defects or uncertainty in the proof, or those errors in judgment from which the wisest men are not exempt. Divine Providence has therefore in its wisdom and beneficence, erected a tribunal in every man's bosom, which he can rarely elude, and in public opinion from which it is still more difficult to escape. These tribunals come in aid of the imperfect institutions of man; and inflict by remorse and dishonor that punishment, from which the good of society, and indeed its preservation, require that the guilty should not wholly escape. Being myself thoroughly convinced, much to my regret and mortification, though

not to my disappointment, that these persons are guilty of the offences charged against them in the indictment, it becomes my painful duty to lay open to the court, the grounds on which this conviction rests, and to remove the flimsey veil which they have endeavoured, in the course of their defence, to throw over their conduct and their motives. I speak with great sincerity, when I call this a painful duty. As it was not imposed on me by any official obligation, no consideration would have induced me to assume it, had I not been previously satisfied of the guilt of these parties, by the best examination of the subject, which I had the means of making. Having undertaken it, and my first convictions having been confirmed instead of being shaken, by the full and patient investigation which the court has witnessed, no consideration whatever shall prevent me from fulfilling it, vigorously and effectually.

The first enquiry is, with what are these parties charged by the indictment? The charge, divested of its technical forms, amounts to this; that they conspired together to cheat the Bank, by getting into their possession through false and fraudulent devices, a large sum of its money, with intent to keep it two months without paying interest.

I shall hereafter have occasion to enquire how far this latter allegation, respecting the non-payment of interest, is at all material to the support of the indictment; but for the present I will take it to be material, and proceed to ascertain, in the proper place, what is its true construction, and how far it has been proved.

In applying to this charge the proof that has been adduced in its support, I will first remark, that these Traversers never received either from the Parent Bank or the Baltimore Branch, that authority to discount on pledges of Stock which they pretended to possess, and actually employed as the means of effecting their fraudulent designs. On this head the proof is ample and undeniable. Indeed no attempt is made, on their part, to prove an authority from the Parent Board; the existence of which fully is disproved, by the production of all its resolutions on the subject: and although there was a feeble attempt, to prove an authority from the Branch Board, it utterly failed. The existence of such an authority is indeed positively disproved. No less than seven Branch Directors, most respectable and intelligent men, very regular in their attendance at the Board, have sworn that no such authority had ever been heard of by them, or to the best of their knowledge ever claimed or alledged by the Traversers; who on the contrary always al-

ledged to the Branch Directors, that they held the authority from the Parent Board.

And what I take to be quite conclusive on this point is, that the Books of the Branch Bank, where the resolution conferring this power if it existed must appear, have been in Court from the commencement of the trial, open to the inspection of the Travers-ers and their Counsel, and still are so, and yet no intimation has been heard that they contain any such power. Another conclusive answer is, that the Branch Board had no authority to give this power. The power was given to them by the Parent Board, without any power of delegation or substitution; which in such a case cannot be implied.

We are next to remark that these persons never had, in the Office of Discount and Deposit at Baltimore, more than 2558 shares of Bank Stock; which at par amounted to $255,800, and at 25 advance to no more than $329,750. It does not appear when they purchased this stock. All that we know about it, is derived from their statement presented at Philadelphia, in March 1819, *(a)* and from the report of the 14th of May 1819, to the Parent Board. *(b)* Whether they possessed this stock, or any stock at all, in the Baltimore Branch, in August 1817 when these stock loans commenced, they have not informed us, nor have we any means of ascertaining. But admitting that they had at that time the whole which they ever had, it could have covered, at the rate of $125 per share, or 25 per cent advance, but $329,750.

The next observation to be made is, that even this small and inconsiderable amount of stock, small and inconsiderable I mean in proportion to the vast extent of their loans, was never in any manner pledged or hypothecated to the Bank, so as to make it operate as a security to any extent whatever. This is in clear proof, by the testimony of Mr. White and Mr. Beatty; and by the memorandum in red ink affixed in the list of effects, to the pretended stock notes of these parties, by Mr. Warfield.*(c)* The resolution of the Parent Board on this subject, that of July 25th 1817, imports that such loans shall be "secured by a pledge of stock of this Bank, or funded debt of the United States;" and it requires expressly "that blank Powers of Attorney to transfer or sell the stock or debt so pledged," shall be transmitted to the offices of Discount and Deposit, so as to inform them of the proper

(a) paper *x* See page 91 (*b*) See page 107—8. (*c*) See page 45, 4[illegible]

per manner of making the pledges effectually. It is perfectly clear that nothing short of an actual deposit of the certificates of Stock, in the hands of the Cashier, with a power to sell and transfer it in default of payment, could give the security required by the Bank, or any security whatever. Without such a deposit and power it is quite undeniable, that the Bank could not have any specific lien on the Stock that might belong to their borrowers, nor be able to hold it against any person to whom it might be subsequently transferred or pledged, for valuable consideration and without notice.

We are also to recollect that it is very doubtful, whether the Branches were ever authorized to discount on pledges of stock, however regularly made, beyond the par value of the stock pledged. The resolution of July 25th 1817, (*a*) the only one that gave express authority on this subject to the Branches, confines in terms the loans which they were authorized to make, on pledges of Bank Stock or funded debt, "to the par value thereof." The resolution of August 26th 1817, (*b*) which authorizes loans on stock to the amount of $125 per share, or 25 per cent above par, is general in its terms. It speaks merely of loans on the stock of the Bank," without expressing by whom they were to be made. It was therefore a matter of construction and inference, whether they were confined to the Parent Bank, or extended to the Branches; and criminality certainly cannot be inferred from an erroneous construction, whatever may be its effect on civil rights. But on another point the resolution is quite explicit. It provides in express terms, that where the sum lent is greater than the par value of the stock pledged, there shall be "two approved names" for the excess. Now it is impossible to conceive that these two names were to be "approved" by the President and Cashier, when they happen themselves to be the borrowers, on their own notes; and consequently when the names to be approved are their own names.

This resolution therefore clearly and undeniably imported, that when a loan on stock exceeded the par value of the stock actually and effectually pledged, and especially if the borrowers were the President and the Cashier on their own notes, these notes so far at least as regarded the excess above par, were to be laid before the Branch Board, and approved by them.

(*a*) See page 26. (*b*) See page 26.

Thus we see in the first place, that there is no evidence whatever that at any time in August 1817, or from then till March 1819, these persons had any stock whatever in the Branch Bank at Baltimore: Secondly that the 2558 shares which they appear to have had there in March 1819, never were in any manner hypothecated to the Bank, so as to give it a lien on them of any kind: Thirdly, that if these shares had been hypothecated, they would have covered at par a loan to no greater amount then $258,800: Fourthly, that the excess of 25 per. cent. above par, would have raised the loan to no more than $329,750: And fifthly, that had every thing else been right, still the notes for this excess above par, amounting to $63,950, were required in the most express manner to be brought before the Board, for its sanction.

Having established these preliminary points, we are now in a situation to commence the developement, of this scene of fraud and imposition. And we are to remark in the outset, that our enquiry is not confined to the $1,540,000, or rather the $1,542,136 12, which make up what is commonly called the Stock loan transaction. This indictment equally embraces the loan of $540,000, granted by these persons to themselves, or one of themselves, on the 12th of August 1817, *(a)* on pretence of a pledge of stock which did not exist.

This was the first fruit of the power which they got into their hands, on the same day, of discounting upon pledges of stock, without consulting the Board of Directors. It has appeared in full proof, and indeed is not denied, that up to that day, the power conferred on the Offices of Discount and Deposit, by the resolution of July 25th, 1817, had been exercised by the Board of Directors itself. Then, by an artful suggestion, evidently made with a view to the intended frauds, it was drawn to themselves by the President and Cashier. What was this suggestion? Several of the Directors, who have been examined as witnesses, have furnished us with a clue to the answer; particularly Mr. M'Kim, *(b)* and I think Mr. George Hoffman. *(c)* They stated that as the stock pledged was the best security, about which there could be no doubt, and consequently no need of reflection or conference, they thought the reference of such loans to the Board an idle ceremony, which well might be dispensed with; although they had no recollection or belief, that the Board had formally resolved to dispense with it. But

(a) See page 29. *(b)* See page, 129 *(c)* See page 139, and the testimony of Mr. Finley, page 119.

what did this necessarily imply? Most certainly that stock or funded debt, to the full amount of the loan at its par value, was effectively pledged, and placed in the possession and power of the bank. Here then we have the key which unlocks this whole mystery of fraud, and exposes to full view the trick by which the Board was imposed on. The Cashier was the keeper of the stock. It was, by the express terms of the resolution, in his hands that the stock was to be placed. He and the President, as executive officers of the Branch, were to see that in making the pledges, or hypothecations, all the requisite formalities were fulfilled.—These matters never appeared in the books; as is fully proved by the present Cashier and other witnesses.

When therefore it was suggested to the Board, by whomsoever the suggestion was made, that to bring stock notes before it for discount was an idle ceremony, I ask again what did the suggestion necessarily imply? Most certainly that the President and Cashier would do their duty; that no loans would be granted without an effective pledge of stock or public debt, regularly made, to its full amount at par; and that if more than par should be applied for, notes for the excess would be laid before the Board, for its sanction.

It is impossible that any thing else can have been understood, or intended: and the fraud of the Traversers consists precisely in this; that they took advantage of this understanding and this confidence, to do that which it is impossible to imagine the Directors would have permitted, had they been apprized of it: to make loans to themselves to an enormous amount, without any pledge of stock whatever, and without stock to pledge to one half of the amount: indeed, as far as appears in proof, without any stock at all.

This is the very essence of fraud; which always commences its operations by endeavoring to inspire confidence, where it does not already exist, by means of which its intended victim may be betrayed. When the vilest and most detestable of all frauds, the seduction of female innocence, is meditated, how does the betrayer commence his attack? By inspiring the unhappy object with confidence in his honor, in his affection. Under the disguise of honourable love he steals first into her heart, and then into her arms: and when his infamous purposes are accomplished, abandons her to dishonour and a broken heart, if not to a Brothel first and then to an Hospital.

These betrayers, indeed, had not the trouble of inspiring the Directors with confidence. It already existed. It was produced by their previous conduct in life; and had been necessarily confirmed by their appointment to stations implying peculiar trust. But they took advantage of its existence, and abused it to perpetrate their fraud; of which it was rendered the chief instrument.

And did they confine themselves to the mere abuse of the confidence thus created? Far from it. They went on to assert a positive and wilful falsehood, with the same fraudulent views. How many of the Branch Directors, men of the highest honor and intelligence, have informed us on their oaths, that these Traversers declared over and over to the Branch Board, that the whole business of stock discounts had been confided to them, as executive business, by the Parent Board; and that the Branch Board had nothing to do with it? I need not repeat the testimony of these witnesses, which has been fully taken down by the members of the court, and is fresh in their recollection. Was not this an absolute and wilful falsehood? Can it be doubted, or will any attempt be made to deny it? None has been made, and we all know that it could not have been made with success. Here then is the direct "suggestio falsi," which the law establishes as the surest criterion of fraud, and indeed its chief ingredient.

Why was this wilful falsehood told and repeated, till it gained universal belief at the Branch Board? The object is plain. The first fraudulent device was to represent, that as the security of stock loans consisted in the stock pledged, and the President and Cashier would of course do their duty, by taking care that it was properly pledged, it would be an useless ceremony to bring such loans before the Board. Here the intention to discount, and the practice immediately adopted of discounting, on pretence of pledges of stock when none was in fact pledged, were carefully kept out of view, and amount to a very gross and palpable instance of the "suppressio veri," one of the chief ingredients and proofs of fraud. The fact suppressed and carefully kept out of sight was, that no stock whatever was pledged. Had the Directors suspected this truth, thus suppressed, it cannot be doubted that they would have immediately interfered, and put a stop to the practice.—There was a just apprehension that they would at length suspect it: that the truth would at length leak out, and come to their knowledge. This danger was to be averted; and for that purpose recourse was had to the direct and wilful falsehood, that the Pa-

rent Bank had withdrawn this whole business of stock loans from the Branch Board, and transferred it as executive business to the President and Cashier.

The indictment charges the Traversers, with employing fraudulent devices and indirect means, to accomplish their purpose of getting the money of the Bank into their hands. Can a charge be more fully supported? Here we find both species of fraud employed: the truth is suppressed, in a most material circumstance, for the purpose of deceiving the Directors; and a most gross and wilful falsehood is told to them, and constantly repeated, in order to keep up the deception, and prevent discovery.

We are told with great emphasis by my learned friend, and I think not without some air of triumph, I will not say of exultation, that this loan of $540,000 as well as all the rest, was put on the books; which were twice a week laid before the Board, and fully disclosed the whole affair. And how, he asks, can the pretence of deception be set up, in the face of this admitted fact? But did these books disclose the whole matter? Or were they, on the contrary, rendered accessary to the fraud and deception? These are the questions which my learned friend must permit me to discuss with him.

First, did these books disclose the whole matter? They no doubt disclosed the fact, that such notes, to such amounts, of such dates, payable at such periods, and drawn and endorsed by such persons, had been discounted for the Traversers, as stock notes. But will my learned friend say that this was the whole matter? Will he say that the security on which these loans purported to be made, on which alone they rested, that the actual existence and extent of the pledge, was no part of the matter? Will he say that it was no part of the matter how much stock these parties had to answer the loans, or whether they had any? Or whether what they might have was or was not really pledged; so as to give the lenders an effective lien on it, for the debt? Surely he will not say this; and yet not one of these particulars, thus manifestly indispensible to the matter, thus constituting its most material part, indeed its very essence, was disclosed or could be learnt by the Books. They were wholly silent on all these heads. This is fully and undeniably proved, by the present Cashier and the Clerks, and by the books themselves now lying before me, and open as they have been for a fortnight, day by day, to the inspection of the Traversers and their counsel. They simply speak of the notes as

stock notes; but make no mention whatever of the stock pledged; its nature, its amount, or the manner in which the pledge was secured. All these matters were within the sole cognizance of the Traversers, Buchanan and M'Culloh, as President and Cashier; and to the latter exclusively belonged the custody of the Stock itself. All this is undeniable.

Now let us ask in what did the malversation consist? Not surely in making the loans, without consulting the Board. That would have been an irregularity indeed; but a perfectly harmless irregularity, had every thing else been right. But in making them without an adequate pledge of stock, or rather without any pledge at all. And was this fact disclosed, by the production half weekly of the books? Most certainly it was not: nor was any thing disclosed, by which an enquiry into the fact was likely to be suggested. Here then is a complete and most artful suppression of the truth, disguised under the ostentatious and studied appearance of candour.

And lest enquiry beyond the books should happen to be made, so as to lead to a discovery of the truth thus suppressed, a studied falsehood is invented and carefully inculcated: that the Branch Board had nothing to do with stock loans; of course nothing to do with the security on which they professed to have been made, its extent, or its reality; all which it was alledged, had been expressly confided by the Parent Board, to the President and Cashier.—Thus these persons, like the lady in the romance, but with far different views;

"Turned all enquiry light away."

Had the matter stopt here, there would still have been a complete and most palpable "suppressio veri" and "suggestio falsi;" and consequently a fraud, according to the most formal definition.

But it was very far from stopping here. The production itself of these books, so much and so triumphantly vaunted, imported necessarily an absolute falsehood.

This is the second point that I am to discuss, with the learned Counsel for the Traversers.

These books speak of stock notes: of loans on stock: of notes discounted on stock. Now what do these terms import? What is implied by this affirmation, that notes have been discounted on stock? Certainly nothing less than this; that the notes were discounted according to the known regulations of the Parent Board; that is on a bona fide and effective pledge of stock, deposited in

the Branch, regularly hypothecated, and in the possession of the Cashier.

I ask if they did not further import, that the loans thus reported were to no greater amount, than the par value of the stock thus hypothecated? They must have been understood as importing this fact also; because the regulation of August 16th 1817, respecting loans on stock beyond par, positively enjoined that in case of any such excess, there should be notes for the amount of the excess at least, with "two approved names:" that is, with a drawer and endorser approved by the Board. As therefore the Board knew that no notes for any excess above par, had in these cases been submitted to them, what I ask were they to conclude? What was the plain language of the books, taken in connexion with this circumstance? Certainly this, that there was no excess: in other words, that stock was not only pledged in a regular and effective manner, but to the full amount at par, of all the loans. I ask if it was possible to understand them in any other manner?

In whose care and custody then were these books? In those of the President and Cashier. Who produced them, knowing all these circumstances, and the false and fraudulent statement which they thus imported? The President and Cashier. Therefore the President and Cashier wilfully and fraudulently affirmed to the Directors, the falsehood which the books as they well knew imported; and thus fixt the key-stone to this arch of fraud and imposition. Is it possible to believe that if the Directors had not been thus deceived, they would have acquiesced in these transactions? That they would not have remonstrated, first to the parties and then to the Parent Board, against such enormous abuses? It is impossible, I presume, to have any doubt upon this head. Their silence and acquiescence were obtained, by means of this series of studied and artful frauds, and false pretences. It was by means of them that in the first instance the fraud was perpetrated. Consequently the indictment, charging a conspiracy to get the money of the bank into their hands, by false and fraudulent devices and indirect means, is fully supported by this evidence.

In using the terms falsehood, fraud and imposition, may it please your honors, it is by no means my wish to wound unnecessarily the feelings of these persons, or of their friends or connexions: but I must call things by their names; and in applying the proof to an indictment which has been found by a Grand Jury, and which charges fraud as part of the crime, I must speak of fraud,

and must endeavour to shew, from the proof in the case, that it has been committed by the persons indicted.

It is urged in defence of these persons, that the Board might at any time have found out the truth; and that if they did not, they and those who suffer with them, must impute the consequences to their own supineness and improper confidence. What is this but saying, that fraud is innocent because it is successful; and that when a man is cheated, he must blame not the dishonesty of the cheat, but his own credulity or folly. This is of a piece with all the rest of the defence. When an incautious young man is inticed into a gaming house, and stript of his money by a combination of gamblers, by the aid mayhap of false dice marked cards or intoxication, it is no doubt his own folly: but are they less cheats, because he is a dupe? He confided in them foolishly. True! but therein consists their fraud: in taking advantage of his foolish confidence, to cheat him of his money. When a country Bumpkin is surrounded in the market or the street by a group of sharpers, inveigled into a tavern, made drunk under pretence of friendship or good fellowship, and cheated of his horse under pretence of a swop, it is no doubt his own fault to go into a tavern, and drink with persons whom he does not know: but are they less knaves, because he has foolishly been persuaded to act towards them as if they were honest men? In truth, may it please your Honours, fraud, as I have already had occasion to remark, always implies confidence, and consists in its abuse. A man cannot be cheated, until he confides. When a fraud on him is meditated, if his confidence be not already possessed, it must be obtained; and accordingly the first operation of every cheat, is to make sure of the confidence of his intended dupe. But if all this were otherwise, what improper or imprudent confidence can be imputed to these directors? Was it not natural that they should confide in the President and Cashier; to the extent at least of believing, that they would not systematically represent wilful falsehoods: that they would do their duty faithfully, in the high and responsible stations in which they had been placed, precisely because they were confided in, and were judged worthy of all confidence? In my mind this confidence, so naturally placed, and unfortunately so much misplaced, as the event has proved, enhances instead of extenuating the guilt of the traversers.

It has been contended that this note of $540,000, discounted on the 12th of August, 1817, was sanctioned by the Directors: and

Mr. Finley, one of the witnesses for the Traversers, says that he has some recollection of such a note having been laid before the board. I have no doubt that Mr. Finley states frankly what he recollects, and nothing but what he recollects. He is not very clear or positive about this fact: but if his recollection be correct, I cannot perceive how it makes the case better. If this note of $540,000 were offered to the Board of Directors, it must have been offered and represented as a stock note; that is as a note secured by an actual pledge of stock; and we know that this representation was absolutely false. It has no endorser, therefore it must have been represented, as a note secured by an actual and effective pledge of Stock at par. But we know that if these parties had any Stock in the Branch Bank, at that time, which does not appear, it was only 2558 shares; far short of the amount of the note at par, or even at 25 per cent advance. Thus it is clear, that whether the note was laid before the directors or not, they were equally imposed on, and the fraud in obtaining it was the same.

The indictment charges that the parties conspired to get this money into their possession, by false, fraudulent and indirect means, "with intent to retain it two months without paying interest." It will hereafter be a question, in the progress of the case how far this allegation as to the intent, is material to be proved: but admitting it for the present to be material, we are to enquire what is its true construction? Does it mean that the parties did not intend to pay interest on this sum at all; or that they did not intend to pay it in the usual and regular manner?

The object of a Bank is not only to receive interest, at some time or other, on the money which they lend, but to receive it at stated and short periods, so as to constitute a revenue for the Stockholders. This object must always be defeated, in a greater or less degree, by delaying in paying the interest: because the Stockholders are deprived so far of the enjoyment of their revenue, and consequently are injured so far by the fraud. It would seem, consequently, to be a reasonable construction of this allegation in the indictment, to consider the term "without paying interest," as applying to the time when the note was to be paid, or renewed; and consequently as meaning "without paying interest at the end of two months."

If so, this note supports the indictment, in all its parts. It fell due, as has been seen, on the 13th of November, 1817; *(a)* and

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(a) See Page 29.

was then renewed at 90 days, with the whole interest included.—Consequently the interest on the renewed note was not paid, at that time. On the 14th of February, 1818, this renewed note fell due, when at least the interest included in it ought to have been paid; but it was renewed again, for 90 days, including the whole interest on the first renewal, and a part of that on the second. And it was not till the 17th or 18th of May, 1818, that the note including these two additions of interest, was finally paid. Thus the interest on the first renewal, which ought to have been paid on the 13th of November, 1817, when the renewed note was made, or at all events on the 14th of February, 1818, when it was again renewed, was fraudulently and without the consent of the Bank withheld, till the 17th of May, 1818. Consequently, the stockholders were fraudulently deprived of their revenue during this period, without their consent, and without any equivalent.

And it must not be forgotten, that as to the renewals of this note in November 1817 and February 1818, there is no pretence that they were brought before the Board, or in any manner known to the Directors.

In relation to the combination, or in technical language the conspiracy, which is charged by this indictment, and indeed makes the gist of the offence, it is proved abundantly, by all the circumstances and testimony in the case. The great mass of the stock notes, amounting to $1,542,126 12, is clearly proved to have been discounted by the Traversers, Buchanan and M'Culloh, for their own benefit and that of their associate George Williams; and it is in full proof that the two first acted in concert, in all the frauds falshoods tricks and concealments which were practised in relation to the matter. Indeed this is not denied; nor is any question raised on this point, as relates to the $1,542,136 12. As regards the note now under consideration, that of August 12th 1817, for $540,000, with its renewals, the proof is equally complete. It is clearly admitted, on all hands, that the renewals were not brought before the board. They were certainly made by Buchanan and M'Culloh, acting in concert with each other; which is the precise definition of conspiracy. And as to the first note, that of August 12, 1817, if it was brought before the Board, it was accompanied by false representations, which deceived and imposed on the Directors, and were the joint work of these two persons: and consequently amount to full proof of the conspiracy.

It is however contended on the part of the Traversers, that the intention of the parties to pay the interest, included in the different renewals of this note, of which intention its actual payment is relied on as the strongest proof, constitutes a complete defence against that part of the indictment, which charges an intent to keep the money two months without paying interest. I have endeavoured to shew, that according to the true construction of the indictment, it does not charge an intent to keep the money without ever paying interest, but without paying it at the times when it regularly became due: That is at the end of the two months, at furthest. If I am right in this position, there is an end of the question. I have also stated, and shall hereafter endeavour to shew, that this allegation about the interest, is wholly immaterial, and need not be proved. In that case also, there is an end of the question. But admitting both these positions to be incorrect, and consequently that the indictment fails, so far as relates to this note of $540,000, the case made is no better: for in the great mass of stock notes of $1,542,136 12, there is a large amount of interest included, which never was paid, and much which there is the utmost reason to believe that the parties never intended to pay. Indeed there is a large sum of the principal which it is quite clear that they never intended to pay; as I presently shall have occasion to shew.

There is also a very large sum due for interest on these notes, besides that which is included in them.

By recurring to the testimony of Mr. White, *(a)* it will be found, that on the 1st December 1817, one of these spurious stock notes, which had been discounted on the 30th August 1817, for S. Smith & Buchanan, to the amount of $280,000 was renewed for $285,000: Thus including $5,000 of interest. It was again renewed on the 3rd of March 1818 for $288,000; including of course a further sum of $3,000 for interest. This made $8,000 of interest.

By the same testimony it appears, *(b)* that on the 6th of December 1817, two notes which had been discounted for these persons, one for $165,000 and the other for 47,000, making together $212,000, were renewed for $215,000; including of course $3,000 of interest, which made $11,000 in all: and that on the 9th of March 1818, this last note was further renewed for $217,000, including $2,000 for interest, and making for the whole interest thus far included, a total of $13,000.

(a) See page 50. *(b)* See page 51.

The same testimony shews, *(a)* that on the 22nd November, 1817, another note for $215,000, which had been discounted for these persons, was renewed for $218,000, making an addition of $3,000 for interest, and raising the amount of interest retained up to that time, to the sum of $16,000. On the 23rd of February 1818, this last note was again renewed, with the addition of $32,000, and became a note of $250,000 *(b)*. And in the renewal on the 26th of May 1818, of a large mass of notes amounting to $358,500 *(c)*, a sum of $12,000 was added so as to raise the renewed note to $370,500; and it cannot be doubted that in both instances, all the interest on the renewed notes was included in these additional sums; or which is the same thing in effect, was paid out of them. The interest on these two renewed notes, which were each for 60 days, amounted to something more than $6,000. But taken at $6,000, and added to the interest before included, it makes a total thus far of $22,000, for interest unpaid.

It also appears from Mr. White's testimony, *(d)*, that on the 2d of November, 1818, $7000 were added for interest, to the notes renewed on that day, for James W. M'Culloh. This raises the whole amount of included interest to $29,000. And the same evidence shews, *(e)* that after the general renewal and general arrangement of November 2d and 12th, 1818, supposing all the interest on that renewal except the $7000 to have been then paid, four months interest became due on this mass of debt, which the three associates directed to be equally divided among them, and charged to their separate accounts. This interest amounted to $32,578 86; and added to the sum included before November 2d, 1818, makes a total of $61,578 86 for interest which remained unpaid on these notes, or was included in them, when they were finally protested on the 10th of July 1819.

It is to be remarked that the whole of this interest is effectively due at this moment; and is absolutely lost by the insolvency of the parties. They indeed made payments, as Mr. White has proved, *(f)* to the amount of about one third of their stock note debt; and although in a strictly legal view the payments may be applicable in the first place to the interest, yet it is clear that whatever is applied to interest must be withheld from principal; and consequently that the debt now unpaid and desperate is larger, by the

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(a) See page 31. *(b)* See pages 31—32. *(c)* See Page 32. *(d)* See page 36. *(e)* See page 40. *(f)* See page 112.

precise amount of the interest included in the notes, or growing due on them after the renewal and consolidation of November 2d 1818, than it would have been had no interest been retained.

Now, may it please your honours, although it is very certain *that a man* may intend to pay, and yet be afterwards deprived of the power, by events which he did not foresee or expect; yet I ask whether under any circumstances he can be allowed, on any principle of law or common sense, to set up this intention however clearly proved, as an excuse in law for getting the property of another into his possession, by criminal means? If a man borrow my money, or contract a debt with me by the purchase of my property, he may be ruined by paying the debt, or I by his failure to pay: but he is not guilty of any thing more than imprudence, if he intended to pay, which must be presumed till the contrary appears: and by shewing that he had a fair prospect of being able to pay, he may even acquit himself of the charge of imprudence. But when was it ever heard, that a man who had cheated me out of the possession of my money or my property, by false tokens or any other false device, or had obtained it by imposition or fraud, was allowed to set up an intention to restore it, as a defence under an indictment? What would be the consequences of such a doctrine? The crime lies in obtaining the possession, by means which the law forbids. Here the law, for the wisest purposes, lays its finger, and pronounces its interdiction. If a man should forge my note or my check, is it a defence to say that he intended to pay the note before it became due, or to replace in a short time the money drawn out by the forged check? Is it a defence to shew that he actually did take up the note, before I ever heard of it; or replace the money before I knew that it was drawn out? Certainly not. And where is the difference, in principle, between those cases and this? Is it not perfectly clear, undeniably proved, that these persons got possession of the whole of this enormous sum of $1,512,136 12, by tricks, falsehoods and imposition, practised on the Bank of the United States, in the persons of its agents the *Directors of the Baltimore Branch*? Were not these Directors told, in order to accomplish this monstrous fraud, that the Parent Board had confided the power of discounting on stock, exclusively to the Traversers Buchanan and M'Culloh? Was not this a clear and wilful falsehood? Were not the same Directors made to believe, for the same purpose, and deceived into the belief by the statement and representation of these notes on the books as "stock

notes," that stock was actually and regularly pledged, for their payment? And was not this also a clear and wilful falsehood? No doubt is or can be entertained, by any body, who has attended to the evidence, about the existence of these two falsehoods; or about the fact, that if the Branch Directors had not been imposed on by them, they would have nipt this peculation in the bud and prevented the withdrawal of this money from their vaults. Of this nobody, who has heard the case, does or can doubt. It is therefore manifest, that this money was obtained by trick, imposition and fraud. It is equally clear, that the purpose of withholding the interest for an indefinite time, till it should suit the convenience or whim of these persons to pay it; till they might be able to spare it from their speculations, the embellishment of their town or country residences, or the support of their equipages and their tables; was accomplished by precisely the same imposition concealment and fraud; for it is quite clear that if the Directors had not thus been imposed on, they would have compelled these persons by the terrors of a protest, to pay the discounts on the renewals of their notes, while they yet had the means, instead of adding them to the debt, by including them in the renewed notes.

Hence it is perfectly clear, upon the best established principles of law, that having enabled themselves by falsehood concealment and imposition, to retain this interest, and to get and preserve the opportunity and the means of retaining it, they cannot be allowed to excuse themselves, by shewing, if they could shew, that it was their intention to pay it at some time or other, when it might happen to suit their convenience and their inclinations.

But they could not shew it, if the law would allow them to do so. The contrary is manifest; as I now proceed to prove. I proceed to prove, that as to any considerable part of this interest, they never intended to pay it, any more than the principal.

And I will remark in the first place, that the studied omission of a man to do that which he ought to do, when he has it fully in his power to do it, is very strong evidence, if not the strongest, of his intention not to do it at all. Now what was the situation of James A. Buchanan, when he retained and added to the mass of his debt, or rather of the common debt of the association, a large part of this interest?

One addition, that of $5000, was made on the 1st of December, 1817, *(a)* the very day when United States Bank stock, as appears by the testimony of Mr. Colt, *(b)* was selling at $155 per. share. This association had then purchased from Dennis A. Smith alone 19,940 shares, at an average of less than $130; *(c)* and taking the average at $130, their profits amounted to $398,000. Stock afterwards rose higher; for on the 30th of December, 1817, as appears by the testimony of Mr Colt, *(d)* it sold at $157 54, on a credit of 75 days; and so confident were they in the success of their speculation, that in the course of the same month, December 1817, they made a further purchase from Smith of 12,000 at $155 per. share, for which of course they paid, and therefore certainly had the means of paying, no less a sum than $1,860,000. And yet with all these vast gains, and these enormous means at their disposal, they did not choose to spare $5000, for the interest on the renewal of their note on December 1st, 1817, but added it to the debt, and it remains at this moment unpaid. What clearer proof that they never intended to pay it?

Under circumstances equally favourable to their ability to pay interest, they made other additions from time to time. One of $3000 on the 22d November, 1817; *(e)* one of $3000 on the 6th December, 1817; *(e)* one on the 3d March, 1818, *(e)* for $3000; and one the 5th of May, 1818, *(f)* for $2000; amounting in the whole with the $5000 first mentioned to $16,000: not to speak of the $6000 and upwards added on the 23d of February, *(e)* and the 26th of May, in the same year. *(g)*

Thus we see that while these persons were in the highest credit, and disposing of enormous sums for the purpose of new speculations, they withheld the payment of interest on these notes, to the amount of $22,000, and deliberately added that sum to the mass of their debt, without the least provision for its payment. What clearer proof, I ask again, that they never intended to pay?

But my learned friend, who conducts their cause with so much ingenuity and zeal, has a triumphant answer to this objection. He tells us that they furnished evidence of this debt for interest, by including it in their notes; and as they then considered their speculations as successful and consequently believed themselves to be rich, their conduct in thus furnishing evidence of this additional debt, is clear proof of their intention to pay. This is the argu-

(a) See page 30. *(b)* See page 97. *(c)* See page 137.
(d) See page 98. *(e)* See page 31. *(f)* See page 30. *(g)* See page 32.

ment which, according to him, sets refutation at defiance; and shakes the indictment to its foundation.

Be it so: I will not stop to shew the infirmity of this argument. Let us rather inquire how they acted, when they knew that their speculation had failed; and that they were in consequence, irretrievably and hopelessly ruined.

It appears from the testimony of Mr. Colt, (*a*) that Bank Stock was at its greatest height in December, 1817, and January 1818; during which months it fluctuated between $152 and $146. On the 11th of March it had fallen to $145. On the 1st of April it had risen to $147. On the 3d it fell to $143¼: after which it continued to fall progressively, with some slight fluctuations, till the 9th of November 1818, when it had sunk to $112. On the 13th of November it fluctuated from $112 to 115. If we suppose that on the 12th it stood at 113, we shall be as near the truth as we can expect to come. But for greater certainly let us take it at 114; and then enquire how these parties stood, and knew themselves to stand, on the 12th of November 1818, when the final arrangement and renewal of their stock debt took place, and exhibited the amount of $1,542,136 12 (*b*).

They had made three successive purchases of stock, from Dennis A. Smith, one of 7404 shares in April 1817, at 19 and 20 per cent advance; one of 12,536 in June 1817 at 36 per cent advance, and one of 12,000 in December of the same year at 55. But a small part of the first purchase, 2000 shares only, was at 19; and taking the average on these four prices 19, 20, 36 and 55, with a view to the quantities of stock purchased at each, it gives us about $139 40 per share, for the average cost of the whole quantity.—The three purchases amounted to something more than 31,900 shares. Taking that as the quantity for the sake of round numbers, and $139 40 as the average price, the whole cost will be $4,446,860.

At $114, the price to which they had fallen on the 12th of November 1818, these 31,900 shares were then worth $3,636,600; being a loss of $810,260 on this part of their speculations alone.

We know that by the paper *x* (*c*) exhibited at Philadelphia in March 1819, they stated the whole number of shares which they then held, and had held for a considerable time, to be 47,398, or 15,490 in addition to those purchased from Dennis A. Smith. We

(*a*) See page 97, 98. (*b*) See pages 32. 36 and 38. (*c*) See page 91.

have no means of ascertaining when or how they obtained these 15,490, or at what price; but if we suppose that they cost on an average $120 there is no reason to believe that we shall place them too high. At this rate their aggregate cost would be $1,858,800. They like the rest had sunk progressively, on the 12th of November, 1818, to $114. The worth of them at this price was, on that day, $1,765,860: and here is another loss of $92, 940, which added to the former of $810,260 on the purchases from D. A. Smith, makes a total of $903,200.

To this must be added commissions, brokerage, interests paid beyond the amount of dividends received, and other incidental charges; the whole of which their counsel, I think, estimated at $200,000, an estimate which no body acquainted with such matters will suppose to be too high. Take them at this sum; and we have an aggregate loss on the 12th of November of $1,103,200.

And let it be remembered, that the fall in stock which produced this enormous loss on the 12th of November 1818, was not sudden, from some alarm which might soon pass away, and leave the hope more or less rational of a reflux of the tide: It was progressive and regular; commenced as we have seen early in April 1818, and went on with great steadiness through seven successive months till it reached the stage of depression at which we find it on the 12th of November 1818, and which was by no means its lowest stage: for it continued to sink, as all men of sense and knowledge must have forseen, till at length, as every body knows, it came down to par and even below, some time in the spring of 1819.

We now see how these persons stood on the 12th of November 1818; and how it is perfectly clear that they knew themselves to stand: for none knew better than they, the history and actual state of the stock market. We are now ready for the inquiry, how they acted in this state of known, irretrievable and desperate ruin.

By recurring to Mr. White's history of the stock note operation, (a) as relates to James W. M'Culloh's part of the mass of notes renewed on the 12th of November 1818, we find that $7000 were included for interest on the renewal, and added to the mass of principal already so enormous. This was done with the connivance and aid of James A. Buchanan, as abundantly appears by the whole transaction. It was done for the mutual benefit of the three

(a) See page 36.

associates, James A. Buchanan, James W. M'Culloh, and George Williams: for in their paper x, (a) exhibited at Philadelphia in March 1819, they represent the whole of this debt as a joint debt, and the whole of the stock as their joint property: and as a joint debt they afterwards divide it equally among themselves, and undertake to pay in equal portions of $300,000 each, the part of it that remained due, after the surrender of the stock which they jointly held. Here then is complete proof of combination, between Buchanan and M'Culloh; the active agents in this withholding of interest to the amount of $7000, on the 12th November 1818, which they knew never would or could be paid, and which of course they never intended to pay: for it is an absurdity and mockery to pretend, that they intended to do that which they perfectly well knew at the time, that they never would be able to do.

What then becomes of this so much vaunted intention to pay the added interest, which we have been told overthrows the prosecution entirely?

Having been incidentally led to mention George Williams, who is not now on his trial, and into whose conduct, except so far as it is connected with that of the other Traversers, Buchanan and M'Culloh, we have no right at present to enquire, I think it proper to remark, that in this point relating to the interest, as well as in many others, his case is most advantageously distinguished from that of his two associates. It does not appear that any interest was included in his part of the stock notes nor indeed that he had any active or direct agency in any of the very reprehensible transactions, with which he suffered himself to be connected, or was apprized of the means by which they were accomplished. Indeed there is evidence, that when he became acquainted with the fact, that notes with his name on them had been discounted without the knowledge of the Branch Board, he expressed his surprise and dissatisfaction at such conduct (b).

To return from this short digression, which I thought due to justice, I beg leave to recal the attention of your Honours to the augmentation of debt by including interest, to the amount of $[illegible],000, which took place on the 12th November 1818, at a time when these persons knew themselves to be insolvent for one million of dollars at least; and I ask how this retention of interest under such circumstances, is to be reconciled with that "intention to pay," on which my learned friend rests, and must rest, the whole defence.

(a) See page 91. (b) See page 129

of his clients? Perhaps he will tell me, as he may do with some plausibility, although I do not recollect to have heard the argument advanced, that the debt had already been contracted, at a time when the parties expected to pay, and when circumstances authorized the expectation; that the interest became due without any new act of the debtors: that being rendered unable to pay it all, through the change of circumstances which had produced their ruin, they were compelled to retain this part; and that in giving their note for it, by including it in one of the renewed notes, they did all that was then in their power.

I will not stop to examine and expose the unsoundness of this argument; which although it might afford some extenuation in a moral point of view, is at war with every legal principle. I again say, "be it so:" and let us next enquire how these persons acted, where no previous debt existed? Whether they kept their hands out of the coffers of the Bank, after they knew that their speculation had totally failed, and that consequently they were insolvent to the amount of a *million at least*?

Your Honours will recollect that on the part of the prosecution there was given in evidence, a list of stock notes as taken from the books of the Office of the Bank of the United States at Baltimore, on the 13th of November 1818, (*a*).

I now hold the paper in my hand. It shews, (*b*) that on the 13th of November 1818, James W. M'Culloh stood indebted on the books of the Bank, as a borrower on stock security, to the amount of $561,201 01, and S. Smith & Buchanan on the same account, for $850,801 77. The Court will please to note the epoch and the sums.

There was also given in evidence for the prosecution, "*a list of* loans upon stock," which appear by the Books to have existed at the Office of the Bank of the United States at Baltimore, on the 8th of March 1819.(*c*) By this list which is also before me, it appears that James W. M'Culloh was on that day a debtor to the Bank on stock loans, to the amount of $592,201 01(*d*); exceeding by $31,000 the amount for which he was *indebted on stock loans, on the 13th of* November 1818.

It also appears by this document, that on the 8th of March 1819 S. Smith and Buchanan were debtors on stock loans, to the amount of $870,801 77 more by $20,000 than the amount of their stock debt, on the 13th of November 1818.

(*a*) See page 68. (*b*) See page 71. (*c*) See page 77. (*d*) See page 80

By recurring to these two documents, and to Mr. White's explanation and detail of the stock notes of these persons, *(a)* we shall find that James W. M'Culloh's part of this augmentation, amounting to $31,000, was effected by the discount of two notes; one of which appears in the great stock note operation detailed by Mr. White, and the other does not.

The first of these two notes, that which appears in the accounnt of their stock debt, on which they made their settlement with the Bank, is for $20,000. It bears date on the 26th of December 1818, and constitutes class No. 17, in the detail of M'Culloh's stock notes.*(b)* It was discounted for him on the 14th of January, 1819, and appears from the list of 8th March 1819, (c) to have been payable on the 29th in March of that year, consequently it was originally a note at three months.

Of the second of these notes, which is for $11,000, and was payable on the 31st of March 1819, no other trace appears than that which is found in this list; and as no such note existed on the 13th of November 1818,* when the first list bears date, it must have been first discounted subsequently to that day. Probably it was like that of $20,000, a note at three months, and having been payable on the 31st of March 1819, will in that case have borne date on the 28th of December 1818. If at four months, it must have borne date on the 28th of November 1818; and if at two, on the 28th of January 1819. Take it at any of these three dates, November, December or January, and the result will be very nearly the same.

Now let us pause for a moment and enquire what was the condition of these parties, as relates to their means and prospects of payment, when these new drafts were made upon the funds confided to their care? To ascertain this point we must look to the prices of stock, at the time of these discounts: that is on the 14th of January 1819, when that of $20,000 is proved to have been made; and on the 28th of November and December 1818, and of January 1819, on some one of which days the original note for $11,000, must have been dated, although it may have been discounted some days later. For this purpose we must again have recourse to the testimo-

* There was a note for $11,000 discounted for M'Culloh but was it of an antecedent period, and was absorbed in the general renewal of November 2d and 12th, 1818, See pages 35 and 36.

(a) See page 32 and 36. (b) See page 36 (c) See page 80.

ny of Mr. Colt, relative to the prices of Bank stock (*a*). It informs us that from the 11th of January 1819 to the 1st of February following, stock fell from $107 the share to $100 or par. There is no account of the intermediate prices. We cannot consequently, place it higher on the 11th of January 1819, when the $20,000 discount was made, than $107. On that day therefore the losses of these persons, on their stock speculations must have exceeded, one million four hundred and forty thousand dollars. According to the calculations which I have already submitted to your honors, their whole mass of stock, consisting of 47,398 shares must have cost them $6,315,600. At $107 the share it was worth $5,071,586 on the 14th January 1819. This produced a loss of $1,244,071, to which add $200,000 for commissions, brokerage, excess of interest paid over dividends received, and other incidental charges, and we have an aggregate loss on January 14th 1819 of $1,444,074.

Such was the state of their affairs when they thought proper to make a new inroad on the funds of the Bank to the extent of $20,000. Their situation was very nearly as bad on the 28th days of November and December 1818 and January 1819, on one of which the other additional loan, that of $11,000, was made. This fully appears from the prices of stock on those days. On the 28th of November it was at $114, on the 28th of December $110; and on the 28th of January probably at par, certainly not above $107.

As to the additional $20,000 discounted for S. Smith and Buchanan, after the 13th November 1818, it does not clearly appear at what time the loan was made. It must have been before the 8th of March 1819; because it appears in the list of that date, where the note is stated to be payable on the 6th of July 1819, (*b*) The history given of it by Mr. White, from the books, is this. It was originally a note drawn by George Williams, and endorsed by S. Smith and Buchanan, and discounted regularly for them, as a note on personal security. On the 3d of March 1819 it fell due, and was paid as a stock note. The money to pay it was obtained on the same day by discounting a note with the same drawers and endorers, and for the same sum, as a stock note, at four months; which consequently became payable on the 6th of July 1819, and is the note mentioned in the list of March 8th in that year.

(*a*) See page 98. (*b*) See page 82.

This note, like all the others called stock notes, was discounted by the President and Cashier, without either the knowledge of the board, or any pledge whatever of Stock. The effect of the operation was, to prevent the note which fell due on the 3d of March 1819, from going for renewal before the board, where it might have encountered some difficulty in the circumstances which then existed; and to blind the Directors a little while longer, by the appearance of paying so considerable a sum as twenty thousand dollars.

Let us now pause and recollect, that all these loans, the additional $51,000, as well as the previous mass, were made to themselves, by themselves, under pretence of special authority from the Parent Board, which they then affirmed to have been given to them, and have now made no attempt to prove, and of actual pledges of stock, which have been positively and clearly disproved. Let us also recollect that on the 13th of November 1818, after which time these loans of $20,000 and $51,000 were thus made to themselves under false and fraudulent pretences, these persons were insolvent, and knew themselves to be so, hopelessly insolvent, to the amount of at least $1,000,000 : and consequently that when they committed these new depredations upon the funds confided to their care, they had not the slighest prospects or hope of ever being able to pay principal or interest, and consequently not the least intention of paying either one or other : let us recollect all this, which is certainly and undeniably established by the proof; and we shall be fully able to decide upon the merits of a defence, which rests wholly on an asserted intention to pay this very principal and interest.

We shall be able indeed to decide upon a defence thus found to be rotten to the core : but how shall we characterize acts, which escape from the clearest definition and character of felony, merely by the aid of that technical principal of law which declares that a man cannot commit felony, by any disposition however flagitious, of money which the ower had placed in his hands, and which he therefore could not in a legal sense be said to "take."

What, I ask, can be said by way of excuse extenuation or apology, for this part of their conduct? Some indulgence may be claimed for them perhaps, while they were elevated and borne forward by the glittering bubble which they had so largely contributed to raise. Some compassion may be felt for their delusion, while by the aid of heated imaginations, they conceived themselves to

be under full sail with a steady and favourable breeze, to the fairy land of unbounded wealth, to some new Eldorado, where the streets are paved with ingots of gold, and the flocks glitter with diamonds hanging to their fleeces. Some aberration may perhaps be pardoned, or at least may be excused, in persons acting under such intoxicating delusions. But when the storm had overtaken them, and their frail bark dashed against the rocks, had sunk forever, and left not a plank to assist them in swimming for their lives, will it be tolerated that they should tell us of their expectations still to make a prosperous voyage, on the anticipated gains of which they relied for means of repaying new appropriations of our property, made to themselves without our consent or knowledge, under circumstances so desperate? No may it please your honours! Such an excuse, as relates to the last loans, would be mockery and insult added to crime; and I think that I may venture to express the hope, nay the confident expectation, that we shall hear of it no more: That we shall no more be told of "the intention of these persons to pay the interest" upon their forced loans; nor hear again that in this allegation, respecting the intention of the Traversers to keep the money two months without paying interest, the indictment is not supported?

Neither, I presume, shall we again hear of their "intention to pay the principal," manifested by their giving their notes for it, and placing those notes on the books of the Bank. If it be true that a man cannot without absurdity alledge, that he intends to repay money which when he takes it he knows that he never will be able to repay, it follows that no such allegation can avail him, in a court of justice; nor any where else, where law or common sense furnishes the rule of conduct and decision.

I now proceed to other parts of the case; which will be found as rotten every where, as we have seen it to be here.

And here let me ask what is or can be said, in defence of this enormous peculation and fraud; by which under pretences proved to be false and wilfully false, upwards of a million and an half of the money confided to the care of these persons, was withdrawn from the Bank by a combination between them and applied to their own use, without the least security for repayment of either principal or interest: withdrawn too as to a large part of it, at a time and under circumstances, which, as they well knew, precluded the possibility of paying either one or the other? What, I repeat, is or can be said in defence of such conduct?

These acts we are told, were done with a three fold view.—First of kindness to Mr. Dennis A. Smith; whom I admit to be now and to have been then worthy of all kindness, for the good which he did, and the benevolence which constantly prompted him to do still more: Secondly, of care for the interests of the Branch Bank, which are said to have been deeply involved in the fate of the Mechanics' Bank; while that Bank in its turn depended on the solvency of Mr. Smith, who had became indebted to it beyond the whole amount of its capital: And thirdly a patriotic anxiety to save the city of Baltimore, from the shock which it must have felt, in the credit of all its monied institutions and the whole mercantile class, from the apprehended failure of the Mechanics' Bank. I think I state the case fairly and fully.

I call it an excuse, may it please you honours, because I cannot suppose that it is intended or considered by my learned friends, as a legal defence or justification. (Here General Winder and Mr. Kell declared, that they did consider it, and rely on it, as a clear legal justification.) Be it so. Let us then enquire into its validity.

And here I remark in the first place, that if the money which they chose to apply to these benevolent purposes had been their own money, the application, however unwise and chimerical, might have been praiseworthy: at all events it would have been innocent. They would have had a right to dispose of their own money for purposes of benevolence, patriotism or speculation. The mint would have been their own, and the coin their own. Above all the risk and the loss would have been their own. But how or when did my learned friends discover, that men have a right to dispose of the money of others for purposes of benevolence or patriotism? Was the money intrusted to their care, for any such object? Certainly not; but for a purpose directly contrary. Why not consult the Bank, about this benevolent and patriotic application of its funds? Why deceive it and its agents the Branch Directors, by studied falsehoods, concealments, misrepresentations, false returns, and false entries in the books? Was it necessary thus to trepan and inveigle the Bank, into these acts of patriotism and benevolence? If so this consequence at least follows; that it was known by these benevolent and patriotic persons, to be averse from this mode of employing its money; and that as the money belonged to it and not to them, and had been confided to their care for purposes altogether different, their sound duty required them to

abstain from such an application, and above all to abstain from making it by such means.

The crime lies in taking the money from the bank by these means; and not in the object for which it was taken.

In estimating the legal gilt, the legal character of the act of taking, that object can never be taken into view, any more than the intention of restoring the money thus withdrawn. Doctor Dodd, no doubt, when he forged the bond of his friend and pupil the Earl of Chesterfield, intended to pay the bond; and probably to apply the money raised on it to some benevolent or praiseworthy purpose: perhaps to the most sacred of all earthly purposes, the support of an aged widowed and suffering mother; or of a wife borne down by sickness or hunger: perhaps of children crying to him for bread. Yet he was condemned: and although many have thought that his case presented a fit occasion for the exercise of the pardoning power, which may temper justice with mercy, nobody has questioned the legal correctness of the sentence.

Divine as well as human law teaches us not to do evil that good may come out of it: and common sense teaches us, that if the nature of crimes could be altered, by reference to the objects with which they are committed, the whole moral and penal code must be subverted. The excuse founded on objects and motives, may be plead before the throne of grace, even in the exercise of that human power, which the poet of nature and truth tells us is "likest God's," the power of pardoning; such considerations may have their weight: but in a tribunal appointed to administer the law, however they may affect the feelings, they must have no influence on the conscience or the decision of a court or jury. What I have thus far urged rests on the idea, that the excuse set up, or the defence, since my learned friend choose to call it so, is true in fact. I now proceed to enquire into its truth.

On the 8th of March 1819, or about that time, this benevolent and patriotic purpose, of securing the Branch Bank from great loss, and the town from a dreadful shock, by enabling Dennis A. Smith to pay his debt to the Mechanics' Bank, was first disclosed.

James A. Buchanan, as the witnesses all state *(a)*, first made the disclosure at a meeting of the Branch Board, in March 1819, when he had the pay list of the 8th of that month in his hand. And what was his situation, and that of his associates, at the period

(a) See pages 118, 119, 120, 130, 131 and 132.

when he thought fit to make this disclosure, to bring to light the benevolent motives and views with which they had acted, in April, June and December 1817, more than a year and an half before? The price of Bank stock on that day, will afford an answer to the question. It stood at $111 the share. *(a)* Compare this price with what it cost them, as already explained, and the extent and utter hopelessness of their ruin will appear. They were insolvent for a million of dollars at least.

Look to their situation in another respect. The resolution of October 20th, 1818, *(b)* calling for stock lists from all the Branches, had been evaded; and we have seen in what manner. *(c)* The Parent Board, however, was soon convinced, it would seem, that something was wrong in the Baltimore Office; and to check its further deviations the resolutions of January 22d, *(d)* and February 1st, 1819, *(e)* were passed. They are couched in general terms, but most probably had a particular view to the Office in Baltimore. At length the Parent Board spoke out, plainly and positively, in the resolution of February 19th, 1820, *(f)* which called peremptorily on the Cashier of the Baltimore Office, in terms, for a particular list of all notes discounted there on stock, with the names of the payers and endorsers, a description of the stock pledged, the rates at which the pledges were made, and copies of the instruments by which they were effected.

The resolutions of January 22d, and February 1st, 1819, had put a hook into the noses of these persons, and checked effectually their further career. This of February 19th, compelled them to open their mouths; longer silence became impossible: something must be said, and on the 8th or 9th of March following, and under the pressure of this irresistable necessity, they disclose for the first time, the benevolent and patriotic intentions, by which they had been actuated in making their forced loans, a year and an half before. The most indulgent kindness towards them must admit, that a disclosure of this nature, made under such circumstances and at such a time, is exceedingly suspicious. But they must not be condemned on suspicion. The disclosure perhaps, though made so tardily, and under so irresistable a pressure, may be true. Let us enquire into its truth. I beg your honours to accompany me through the enquiry; and I speak with entire confidence when I say

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(a) See page 99. *(b)* See page 27. *(c)* See pages 57, 58, &c. —
(d) See page 27 and 28. *(e)* See page 28. *(f)* See Page 28.

that it will result in proving this whole story, to be absolutely destitute of truth, in all its parts. It is indeed a most disgusting tissue of falsehoods and I touch it with loathing.

The excuse, or the defence, if my learned friends will still persist in calling it so, amounts to this: that the purchases of stock from Dennis A. Smith, gave occasion to their discounts to themselves, under the name of stock loans; and that the object of these purchases was to enable Mr. Smith to pay his debt to the Mechanics' Bank, and thus save it from ruin and the Branch Bank from great loss.

Let us apply the touchstone of dates to this story. Dates are the spear of Ithuriel; and when fraud, under whatever disguise it may lie concealed, is touched by them, it immediately starts up in all its native deformity.

The first enquiry is, did their purchases from D. A. Smith really give rise to these forced loans from the Banch Bank?

Their first purchase from Mr. Smith was in April 1817, and their second in June of the same year. *(a)* These two purchases embraced 19,940 shares, which cost $2,591,368, and gave Mr. Smith a profit of $492,625. *(a)* All this was accomplished before the month of July 1817. They had found the means of purchasing stock to the amount of nearly two millions six hundred thousand dollars, for which they had paid; and these purchases had yielded Mr. Smith a profit of very nearly half a million, which he had received. I repeat and request it to be remembered, that all was accomplished before the month of July 1817.

And when did those stock loans commence, which we are so emphatically and perseveringly told, were produced and rendered necessary by the purchases from Mr. Smith? Turn to Mr. White's testimony and explanation of the stock loans, *(b)* and you have the answer. The first of them was that of $30,000 on the 5th of August 1817, at least five weeks after the second purchase from Dennis A. Smith. Next followed that of August 12th 1817 for $540,000, six weeks at least after the second purchase. Then came those of August 22d (c) 1817 for $215,000, and August 30th for $280,000, of the 4th and 5th of September 1817 for $47,000 and $165,000, and of the 11th of the same month for $37,000 which although it originated earlier, did not become a stock note till that

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(a) See pages 136, 137. (b) See pages 29, 42, 43 and 44. (c) See page 30.

day. (a) These were all for S. Smith and Buchanan, and constituted a mass of $1,314,000.

James W. M'Culloh's first stock note was that of September 5th 1817, for $15,000, which was soon followed by those of October 7th 1817 for $15000, and of the 23d, of the same month for 25,000, making a total so far of $55,000. And on the 20th of October 1817, George Williams' part of the operation commenced, with a note for $90,000, which added to the previous discounts of S. Smith and Buchanan ($1,314,000) and James W. M'Culloh (55,000) produce an aggregate of $1,449,000 which these persons had obtained, or rather taken to themselves, under the name and colour of stock loans, between the months of June and December 1817: that is after the second purchase from Mr. Smith, and before the third, which it must be remembered was made in December 1817 (a). Afterwards, it is true, that is on the 14th of February 1818, they took up the note of $540,000, (b) which seems to have been done to hold up the appearance of a compliance, with the pressing order from the Parent Board of February 5th 1818 (c) to curtail on stock loans. But they soon went on to make new loans to themselves, so as to render the curtailment rather apparent than real; or rather so as to make the real curtailment very inconsiderable. This, however, is unimportant to the present view of the case, the object of which is to shew, how little connexion there was between the stock loans in question, and the purchases from Dennis A. Smith: or rather to shew that there was no such connexion whatever.

And accordingly we see, that these stock loans commenced five weeks after they had effected their two first purchases, and that at least six weeks before they made the third, they had pushed their operation of stock loans to very nearly its greatest extent. The whole amount was $1,542,136 12. The amount taken from the 5th of August to the 20th of October 1817, inclusive, was one million four hundred and fifty nine thousand dollars. Hence it is quite clear, that except as to the difference between these two sums, amounting to eighty three thousand one hundred and thirty six dollars twelve cents, the stock loans could not possibly have had the smallest connexion with the purchases from Mr. Smith, the money for which was no doubt raised, by hypothecating the stock in London Liverpool and elsewhere, (d) and then drawing Bills on the funds thus created.

(a) See page 30 (b) See page 29 (c) See page 56 (d) See paper [illegible] pages 91,92

But this is not the worst part of the detection bad as it is. The whole amount of Smith's debt to the Mechanics' Bank never exceeded from eight to nine hundred thousand dollars. This is clearly established by the testimony of Mr. Smith himself, (*a*) who states the debt at from seven to eight hundred thousand dollars; and of Alexander Brown, (*b*) a most intelligent witness and particularly well informed on this subject, who says that it was from eight to nine hundred thousand dollars. Mr. Meredith, indeed, at first supposed that it amounted to twelve hundred thousand dollars, but he afterwards admitted this to be an error (*c*). Now we are to recollect that the very first act of Mr. Smith, when he found in the beginning of April 1817 that his embarrassments increased upon him so as to render his failure inevitable, was to go like an honest man, and put into the hands of his friend and counsel Mr. Meredith, then a director of the Mechanics' Bank, no less than four hundred thousand dollars in good and available securities, to be applied in discharge of his debt to the Bank. This payment so promptly and honorably made, reduced his debt to between four and five hundred thousand dollars, according to its amount as afterwards ascertained. At the time of making the payment much less was supposed to remain due (*d*).

Now let us recollect that Mr. Smith cleared, by his two first sales of stock to this association, those of April and June 1817, the sum $192,657; (*e*) which was quite enough to pay all that remained due to the Mechanics' Bank, after the payment of $400,000 in April 1817, according to the highest estimate of the debt. Where then, will my learned friends be so good as to inform me, was the necessity for the third purchase from this gentleman, in December 1817, at the extravagant rate of $155 to the share, and to the enormous amount of $1,860,000? They cannot tell me, I am sure; not because they do not know, but because their situation forbids. I will by and by tell them: but in the mean time I must present one more view of the subject, and a still more important one, for the consideration of the court.

These speculations in stock with Mr. Smith were made, it is said, to enable him to save the credit of the Mechanics' Bank, by paying his debt to it, and thus enabling it in its turn to pay the debt which it owed the Baltimore Branch. Now *what was Mr. Smith's* situation in relation to the Mechanics' Bank, when these purchases began.

(*a*) See page 125. (*b*) See page 23, 24, 25. (*c*) See page 125 and 123. (*d*) See page 125 and 123. (*e*) See page 137.

I answer that he had already, from other resources, quite independent of the first of these purchases, made a payment to the Bank of $400,000 (*a*). It does not appear by direct testimony at what time this payment was made: but it was just at the time of his stoppage, and indeed before he stopped, and when he only perceived that he must stop.

This stoppage, as Mr. Smith has informed us, (*b*) took place on the 9th of April 1817; and he also states expressly, that the first sale to the Traversers was after his stoppage. We know besides from the testimony of Mr. Meredith and Mr. Brown, that the payment of $400,000 was made in "bills receivable" or promisory notes; some of which to the amount of $250,000, were discounted by the Branch Bank, and the rest by individuals. Now there is no proof, and it cannot be presumed, that the Traversers paid Smith for his stock in bills receivable, falling due at different and some of them at remote periods. It is clear that these bills receivable were a part of his estate and effects, derived from his commercial transactions, and wholly independent of his sales of stock.

Thus we see that without reference to the first of these sales, and even before it was made, Mr. Smith had paid no less a sum than $400,000, on account of his debt to the Mechanics' Bank. Now let us enquire what effect this payment had on the affairs and credit of the Mechanics' Bank, and its situation with the Office of Discount and Deposit at Baltimore. Here we may safely receive the testimony of Mr. Brown, a Director of the Mechanics' Bank at that time, a very intelligent man, and the most efficient agent in the whole arrangement.

He tells us, (*c*) that he considered the Mechanics' Bank as secure, after these notes to the amount of $400,000 were assigned to it, by Mr. Smith. This view of the case is supported both by Mr. Colt (*d*) and Mr. Meredith; though not so expressly by the latter gentleman as by the former. They all agree in stating that there was but one meeting of the joint committee, on the affairs of the Mechanics' and Branch Banks, at which every thing was fully and satisfactorily adjusted, and the Mechanics' Bank placed in an easy safe situation. I will now introduce to your Honors a witness, whose accuracy neither the Traversers nor their Counsel will call in question, and who fully supports the same statement. He also proves

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(*a*) See page 122, 123, Mr. Meredith's testimony, and 124 Mr. Brown's
(*b*) See pages 138. (*c*) See page 124. (*d*) See page 126

the very important fact, that this satisfactory and advantageous settlement, satisfactory and advantageous to both parties, took place and was finally accomplished on the 24th of April 1817. This witness is James A. Buchanan, then President of the Baltimore Branch.

In his letter of April 25th 1817, (*a*) he officially informs the President of the Parent Board of this arrangement, which he says took place on the preceeding day. In this letter we find this very remarkable expression : remarkable I mean when taken in connexion with the defence which I am now considering. "A full free and unreserved interchange of opinion took place, the result of which is a satisfactory conviction to our minds, that the Mechanics' Bank can sustain no loss from Mr. Smith."

On this letter comment would be superfluous. I will barely remind your honors that the adjustment which thus placed the Mechanics' Bank out of danger of "loss from Mr. Smith," was effected by means wholly unconnected with those purchases of stock from Mr. Smith, which the writer of this letter would now have us to believe were made for the express purpose of enabling him to pay his debt to the Mechanics' Bank, and in all probability before the first of those purchases took place.

There is also an official letter from James W. M'Culloh, to the Cashier of the Parent Bank, dated June 23d, 1817, (*b*) in which the same subject is mentioned, not so fully indeed, but to the same effect. I merely recal this letter to the recollection of the court, without detaining it by any detail. But I must refer somewhat more particularly to one from James A. Buchanan to the Cashier of the Parent Board, which bears date on the 31st of October 1817. (*c*) In speaking of the arrangment of April 24th 1817, he uses this remarkable expression, "the Mechanics' Bank is of unimpaired credit;" and this state of things he ascribes not to any subsequent operation, but solely to that of which he had made mention in his letter of April 25th.

But should we admit that Mr. Smith's means of making this payment of $400,000, in April 1817, were derived in whole or in part from the first sale to the Traversers, that of 7404 shares in the same month, how would it avail them?

The whole amount of this sale was $886,400, and Smith's gain from it, as stated by himself, (*d*) was $146,080. This gain if it accrued before the payment of $400,000, and made part of it, still left a balance of $253,920 which he unquestionably derived from

(*a*) See page 134. (*b*) See pages 134, 5. (*c*) See page 135. (*d*) See page 137.

his own means. And after he had effected this payment he still owed the Mechanics' Bank, as was afterwards discovered but not suspected at the time, a debt of between four and five hundred thousand dollars. Let us call it five hundred thousand dollars, that we may be sure not to rate it too low. To pay this $500,000 he possessed those ample resources, which enabled him to discharge a debt of five millions in the course of that year. The Mechanics' Bank had placed its debt to the Branch on a satisfactory footing, and was itself in a safe and easy situation, with its credit "unimpaired" and public confidence restored. In this state of things the second purchase is made; that of 12,536 shares in June 1817, at $136 the share, amounting to $1,704,896. Did the state of Mr. Smith's affairs, of those of the Mechanics' Bank, or of the Baltimore Branch, at that time require this enormous speculation? Certainly not. Neither he nor the Mechanics' Bank required the least assistance. He had paid them $400,000, and they had paid the same sum to the Branch Bank. His balance to the Mechanics' Bank, and their balance to the Branch were placed on a satisfactory footing; their credit stood "unimpaired;" and public confidence was completely restored. It is therefore worse than mockery to tell us, that the second purchase was made for the purpose of supporting Dennis A. Smith and the Mechanics' Bank.

Let us however grant that it was so, and then enquire how far, even this concession will aid their case.

The amount of the second purchase 12,536 shares at $136 the share was $1,704,896, and Smith's gain on it was $346,577. (a) After his first payment to the Mechanics' Bank, of $400,000 in April 1817, he had still from three to four hundred thousand dollars to pay, as he himself states; (b) or from four to five hundred thousand dollars, as Mr. Brown thinks. (b) It may be safely stated at $400,000 as an average of these different rates. Now of this $400,000 the sum of $346,577, was furnished by the second sale; leaving a balance of only $53,423 to be provided for by the third.

Here at least it might be supposed, that all anxiety about Dennis A. Smith and the Mechanics' Bank, departed from the breasts of these kind and patriotic persons: more especially as we find that in December 1817, when he made his final payment to the Mechanics' Bank, he not only possessed and paid to the Bank $155,000 in promissory notes, clearly not derived from any of these

(a) See page 137. (b) See page 125

sales, but the Calverton estate besides, which the Bank received at $90,000, being $50,000 more than the amount of the mortgage, from which it was released in consequence of the last sale. (a)— But no! their anxiety continued to be so great, for this most estimable individual, and for this institution so important to the public, that it impelled them to make a third purchase from him in December 1817, at the extravagant rate of $155 to the share, and to the enormous amount of $1,860,000; by which he was to be enabled to acquire a profit of $55,000, being little more than the balance remaining due from him to the Mechanics' Bank, after applying in payment a sum equal to the gains derived from the two former operations.

And this is the absurd and extravagant tale which is set up as a defence in a court of justice, and which we are gravely required to believe! We are gravely called on to believe that these men, from motives of mere benevolence and patriotism, engaged in a speculation in Bank stock to the amount of $4,451,376, the whole of which was purchased at an average of $138 to the share, and more than one third of it at the extravagant rate of $155, for the sole purpose of furnishing Mr. Smith with additional means of paying a debt of $800,000, to the Mechanics' Bank, of which it is clearly in proof that means derived from other sources had enabled him promptly to discharge one half, so as to put an end to all disquietude, and place the institution in the safe and easy situation of "unimpaired credit"!!

To such a tale it is, I repeat, that a court of justice acting on oath, and invested in this case with the powers and obligations of a jury, is gravely called on to give credit!!

We are now prepared to understand and to explain the real *motive and object of these purchases, and especially of the last.* The two first were manifestly bold and wild speculations, upon the rise of Bank stock; and had they been made at the risk of the speculators themselves, or with their own means, might have stood on the same ground with other instances of this species of desperate gambling; by which enormous gains are sometimes made, at the expence of the less fortunate gamesters, and enormous loss as frequently incurred. This applies more strongly to the second purchase than to the first; although both are of the same character. But the third stands on different grounds, and requires more particular explanation.

(a) See page 123.

This explanation is found in the situation of these parties, and of their stock speculation, in December 1817, the period of the last purchase. Let it be recollected that the purchase embraced 12,000 shares at $155 to the share, and amounted to one million eight hundred and sixty thousand dollars.

Nobody can suppose that men of the knowledge and intelligence possessed by these Traversers did or could believe, that Bank stock was or ever could be worth $155 to the share of $100 It was well known, and could not have been forgotten, that the old Bank of the United States, existing in the most prosperous period of commerce which this country ever saw or ever can expect to see, with a capital of only ten millions of dollars, and comparatively few rival Banks, divided regularly no more than 8 per cent annually; and that such dividends, supported steadily through a long succession of years, gave a regular settled price of only $140 to the share of one hundred dollars. How then was it possible for any men of sense, with these facts fresh in their recollection, to believe that a Bank with a capital of $35,000,000, a commerce greatly diminished by the changes in the political state of the world, and a much greater number of powerful rivals in the state Banks; in short with a great diminution of the demand for Bank capital, and a great increase in the supply; could make and steadily support such dividends, as would sustain its stock at 40 per. cent. advance, much less at 55! No, may it please your honours; these men believed no such thing. They had been long and deeply engaged in blowing up a bubble, on which they hoped to float to fortune. Not only their hopes of fortune, but their sole chance of escape from utter ruin exposure and disgrace, depended on keeping this bubble afloat. Should it break they must sink, and they knew it well, to utter perdition. Under their two former purchases from Smith, they held the enormous quantity of 19,910 shares, which independently of brokerage commission and other charges, had cost them $2,591,376. Very nearly two thirds of this vast mass of stock had cost them the extravagant price of $136 to the share of one hundred dollars: that is 36 per cent above par. For the rest they had paid a high price. A slight fall on so great a number of shares, must produce their ruin. Mr. Smith, more skilled than they in such speculations, had by his activity and intelligence obtained the controul of 12,000 shares more. He held contracts for them, by virtue of which he was to have them, on paying a certain price.— If he did not pay it he failed to get the shares, and stood where he

was before. If he could obtain a higher price from others, all the difference was gain to him. He knew the situation of these men, and that he held their fortunes their reputation and their very existence in his hands. They knew it too. He had but to go into the market with his 12,000 shares, and the bubble must burst. He would remain where he was, but they must sink into hopeless ruin. He therefore prescribed his terms, which considering his power over them may be regarded as moderate; and they were compelled to submit. He contented himself with a gain of $55,000 besides the release of their mortgage on his Calverton estate, to the amount of forty thousand dollars more. This release, he tells us *indeed*, was not an express part of the bargain; and we are given to understand (*a*) that it proceeded from a grateful liberality on their part, on account of the large benefits which they had derived from the two first purchases. We also learn from Mr. Smith, (*a*) that he received an assurance from one of the purchasers, James W. M'Culloh, that if any profits should arise from the last purchase, they should be assigned to him (*a*).

This no doubt was intended to be understood, as a further instance of liberality and gratitude on their part; but we may understand it as an additional proof, that the real object of the purchase was to keep him and his 12,000 shares of stock out of the market: and such I have no doubt was the true motive of this most extravagant and desperate speculation.

Before I quit this subject of the arrangement of Dennis A. Smith's affairs with the Mechanics' Bank, and the settlement between that Bank and the Baltimore Branch; I must take some notice of a circumstance, frequently mentioned and much relied on in the defence: I mean the secrecy enjoined on the committee of conference from the Branch Bank, in relation to the manner in which the settlement with the Mechanics' Bank had been effected. This injunction of secrecy my learned friend who conducts the defence, seems to consider as of very great importance; and indeed he finds in it the only explanation which he has attempted to give, of the false entry made by James W. M'Culloh, in the books of the Branch Bank, on the 14th of November 1818, a year and an half after the injunction was laid.

Now it is perfectly clear that this injunction of secrecy was laid by the committee of the Mechanics' Bank; and that its object

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(*a*) See page 127.

was to prevent the public from knowing how deeply that Bank had been and still was implicated with Dennis A. Smith, whose failure could not be concealed. For although the two committees were perfectly satisfied, at the meeting on the 24th of April 1817, as to the ability of Mr. Smith to pay his remaining debt to the Mechanics' Bank, and that of the Mechanics' Bank to pay all that it still owed to the Branch, yet these matters getting abroad might easily be misunderstood, and would be very likely to create a general alarm, which would not be less dangerous for being unfounded. To prevent this danger was manifestly the object of the injunction of secrecy; a very prudent precaution, which had a very happy effect: for we find that the alarm entirely subsided, in a very short time, and that confidence in the solidity of the Mechanics' Bank was soon restored. This is fully proved by Mr. Brown Mr. Meredith and Mr. Colt. But it is perfectly clear that all this had no relation whatever to the affairs of the Branch Bank, except so far as that institution had an interest in common with the rest of the community, in maintaining the credit of the Mechanics' Bank; and that when Mr. Smith in December 1817 made the final payment of his debt to that Bank, all motive for secrecy ceased, and the injunction was no longer regarded. It is impossible I apprehend to recollect and compare the testimony, without being fully impressed with the correctness of this view of the case.

One other remark, connected with this part of the case, may it please your honours, before I proceed to the other points which remain to be discussed.

Great pains have been taken to prove, on the part of the Traversers, that some of the Branch directors, and especially Mr. Colt, expressed strong approbation of the conduct of these persons, as explained to the Board by the President on the 8th or 9th of March 1819. Mr. Colt is stated to have been so much struck with their merits in this transaction, as to declare that if the Branch lost "the whole line of $600,000," it would still be under great obligations to them. It was to this supposed fact, I presume, that my learned friend alluded in his opening address; when he said that some of those who are now most eager in prosecuting his clients, were formerly *the first to praise* the course of conduct for which they were afterwards indicted. I shall not now stop to enquire, how much of mistake there is in this testimony. There evidently is some mistake, and probably a great deal: for it is quite clear that there existed at the time no "line of $600,000;" and

neither Mr. Colt himself, nor Mr. John Hoffman who stood at his side when the remark is supposed to have been made, recollects any thing of *(a)* the kind. It equally escaped the attention of Mr. Beatty. *(b)* But admitting that it was made, I ask what does it prove? Certainly *nothing but this, that Mr Colt was deceived* and imposed on, as it was intended that he and the other Directors should be. He and they had heard a tale, which we now know to have been wholly false; but which for want of the information that we possess, he and probably they believed to be true. This proves that the deception, as far as he was concerned, produced its intended effect. But is it less a deception, because he was not able at the moment to detect it? Was it less false, because he at the moment did not know it to be false? And what is this boasted argument, but a second attempt to prove, that fraud ceases to be fraud, whenever it succeeds?

I proceed now to review the means put in practice by these persons, to deceive the Parent Board, and to conceal from it their malpractices in the Baltimore Branch. These devices I consider as part of the "res gesta," and as important in shewing the "quo animo;" the intention with which the acts charged in the indictment were done. And I need not remind such a court as I now address, that subsequent acts in relation to the same matter, are frequently our surest guides in searching for that previous intent, *in which criminality consists.* Fraudulent concealment, consequently, affords the strongest evidence of fraudulent taking. Let us therefore take a brief review of the falsehoods and frauds, by which the taking of this money from the Branch Bank was attempted to be concealed. For this purpose I must recur again to the resolution of October 20th, 1818; which first called upon the Branch Banks, for distinct accounts of loans upon stock. *(c)*

This call, as we have already had occasion to remark, was general in its terms, so as to include all the Offices of Discount and Deposit; but very specific and precise in its objects. It embraced three points; first a separate list of notes discounted on stock security; secondly the names of the drawers and endorsers; and thirdly an account of the stock pledged. *(d)*

It is quite obvious, that a true answer to this call would have disclosed the whole fraud of the Traversers, and produced an im-

(a) See pages 132, 133. *(b)* See page 131. *(c)* See page 27. *(d)* See pages 62, 63.

mediate explosion. This they knew as well then, as we know it now. They seem, nevertheless, not to have perceived at first, how this catastrophy might be avoided. It appears from the testimony of Mr. Dennis A. Smith, (a) that a stock list was prepared and carried by James W. M'Culloh to Philadelphia, which it was found necessary to alter, before it could be presented to the Parent Board; and this alteration, as we further learn from the same witness, was to consist in transferring part of the stock loans, to loans on personal security. This measure, it seems, was advised by Jonathan Smith, the Cashier of the Parent Bank; and it was not whispered in "unwilling ears." M'Culloh forthwith returns to Baltimore, without presenting the list to the Parent Board, (a) and begins to prepare for this indispensible alteration.

The first step in the preparation that has come to light, was to write a letter on the 9th of November 1818, to the Cashier of the Parent Bank (a). This letter, obviously intended for the inspection of the board at Philadelphia, paves the way for the meditated alteration, by stating that "entries had sometimes been debited to loans on stock, which should have been to bills on personal security; and vice versa." This we now know, and he knew then, was absolutely false. No such entries are found in the books; nor is it now pretended or intimated that any such exist.

The next step is of the same general character, but far more grave and heinous. The first was a simple falsehood, wilful indeed, and told with the deliberate purpose of deceiving: This is forgery of the deepest die; a deliberate falsification of the books intrusted to his care, which he was bound by every tie of honor, and by the express terms of his oath of office, to keep faithfully. They should have been as sacred in his eyes as the honor of his mother. They are the records on which the rights of all interested in the institution depend; and to alter them is like removing the landmarks of property: a heinous offence in any one, but in him to whose official keeping and to the sanction of whose oath they were confided, a crime of the darkest hue. Yet this crime these persons did not hesitate, or at least did not forbear, to commit, for the purpose of concealing their frauds from the Parent Bank, as well as from the Baltimore Branch. I say "these persons," may it please your Honours: because although the proof is that Mr. M'Culloh alone ordered this alteration, it is yet in full evidence

(a) See pages 62, 63.

that he and Buchanan acted in concert, throughout the whole transaction to which it relates, and of which it makes a most important part. The presumption therefore clearly is, that he concurred in this part also. If he wishes to have it otherwise believed, the burden of the proof lies on him; and such proof no attempt has been made *to produce*. *Let us now look at this alteration of the books.*

Mr. Rutter one of the book keepers of the Baltimore Branch, informs us *(a)* that on the 14th of November 1818, James W. M'Culloh the Cashier handed to him an entry, written on a separate piece of paper, and directed him to copy it into the day book; which he accordingly did. He says that it was the hand writing of M'Culloh himself, and that he entered it without further enquiry: conceiving it, I suppose, to be his duty, as it undoubtedly was, to make any entries in the books which the Cashier might order. He then opened the book and read from it the entry thus made. Permit me to read it to your Honours, from the copy which I hold in my hand, and which was made at my request by Mr. Rutter. The Book is here to attest its correctness.

"Bills Receivable To Loans on Stock Dr.

For this sum, being amount that had at various times been charged, as lent upon the hypothecation of stock at this office, but which should have been charged to Bills Receivable, as ascertained by making up a list of the loans existing upon stock, hypothecated here and at the Bank of the United States. $852,683 64."

The court will recollect that the books have been produced and inspected: That they have laid on the table three weeks, open to the Traversers and their Counsel: that the assistance of the clerks in attendance, and of the present Cashier, has at all times been readily afforded: That access has always and readily been given to these books, out of court, for the purpose of more careful and convenient examination: and that no attempt has been made on the part of the Traversers, to point out any such errors as this entry and the letter of November 9th import, nor indeed any intimation that such errors exist. On the contrary it fully appears, by the inspection of the books themselves, as well as by the testimony of the clerks and the present Cashier, that no such errors exist. *Thus* it is established, and indeed admitted, that the entry is absolutely false. And my learned friend who conducts the defence, has been

(a) See page 61.

able with all his ingenuity, to suggest no better excuse for it, than to say that it might in some way which he did not attempt to explain, be connected with the injunction of secrecy imposed in April 1817, on the members of the joint committee from the Branch and Mechanics' Banks.

Its falsehood being thus undeniably established, let us enquire a little into its object and effect.

For this purpose we must resort in the first place, to the statement of their stock and stock loans, which these persons exhibited in Philadelphia in March 1819, and which is called the paper x (a). I shall hereafter have occasion to advert to it, with other views; but my present use of it, is to shew the amount and condition of the stock held by these persons. It informs us that they had 18,290 shares hypothecated at par in the Bank of the United States; and that on 5264 shares, part of the 18,290, they had taken there 25 per cent advance; leaving 13,026 still at their disposal, so far as it had any disposable value above par.

Twenty five advance on these 13,026 shares would amount to	$325,650
This paper also shews, and it is the first intimation which we get on the subject, that they held in the Baltimore Branch 2,558 shares, which at par would yield	$255,800
and 25 advance on them would be	63,950
This was all the stock security over which, according to their own shewing, they had any power of disposition; within the limits of 25 per cent above par, the utmost limit to which discounts on Stock had ever been authorized. It produced the sum of	$645,400.

It is true that not one of these 13,026 shares was in fact hypothecated at the Baltimore Branch, for the additional loan thus obtained on them; and that no hypothecation existed there or any where else, of any part of the 2558 shares. Neither was any lien given, in any way, to the Parent Bank or the Baltimore Branch, on the 13,026 shares, beyond their par value. But still this security, to this extent, was in their power; and their object was to represent untruly to the Parent Bank, in answer to its call of October 20th, 1818, that their stock loans in the Baltimore Branch had not gone beyond this security: that is had not exceed $645,400.

(a) See page 91.

Had they told the truth on the 14th of November 1818, it must have appeared, that on this security of $645,400, or rather on the pretence of it, they had then made loans to themselves to the amount of $1,581,836 12 : that being the amount, as we have already seen, of their stock loans on the 13th of that month.*(a)* Such a disclosure would have been fatal to all their plans and hopes.— The truth therefore was to be concealed ; and the Parent Board was to be imposed on, as the Branch had been, by a false statement. To lay the foundation of this false statement, and to give it colour and support, was the object of their false entry of November 14th 1818 : on which my learned friends on the other side have bestowed the gentle appellation of "the transfer entry." Now let us see its effects.

This entry transferred $852,683 64 from loans on stock, to loans on personal security. Being posted immediately into the ledger, as Mr. Rutter informs us that it was, it there formed an item in the general account of stock loans, the balance to the debit of which, as proved by the same witness and the books, *(b)* was $2,402,435 78. We know that a stock list was transmitted to Philadelphia, on the same day when this entry was made, November 14th. 1818 ; *(c)* but not having been able to produce it, or to prove the copy that was offered in evidence, we do not know what it contained. We may however fairly conclude, that it did not differ materially from that which was transmitted by these persons in March 1819, only four months afterwards. By recurring to the stock list of March 9th 1819, *(c)* we find in the first place, that it represents the stock loans as amounting on that day to $2,400,202 90 only $2,232 88 less than the balance standing on the ledger, to the debit of stock loans, on the 14th of November 1818, as proved by Mr. Rutter : *(d)* and secondly we find, that it represents the whole stock debt of the Traversers, on the 8th of March 1819, as amounting precisely to this sum of $645,400 ; exclusive of $3,400 standing to the separate account of James W. M'Culloh, and secured by an actual hypothecation of 34 shares.

It cannot be conceived that the near agreement in the total amount, between the account in the ledger on the 14th of November 1818, and the stock list of March 8th, 1819, is accidental. It must have been produced by the operation of the false entry, equally on both. Nor can it be conceived that the stock list furnished

(a) See page 71, 2 3. *(b)* See page 64. *(c)* See pages 58, 59, *(d)* See pages 73 and 76.

on the 8th of March 1819, differed in any material particular from that of November 14th, 1818. As the latter represented the stock debt of the Traversers to amount to this precise sum of $615,400, we are authorized to conclude that the former gave the same representation: and consequently that it was the effect, as it certainly was the object, of this false entry, or to use its more gentle name this "transfer entry," to represent these persons to the Parent Board, as borrowers upon stock to no greater amount, than they might cover by unappropriated stock security which they held.

And this false entry is not the only fraudulent device employed by the Traversers, to deceive the Parent Board, evade its call of October 20th, 1818, and keep it in the dark as to the true state of matters in the Baltimore Branch. We have seen that it was not till the 14th of November, 1818, twenty four days after this order, that a pretended obedience was yielded. M'Culloh's letters of that date prove, that a stock list was then sent; for which diligent search has been made in the Bank at Philadelphia, without success. *(a)* How why and when it disappeared remains to be explained, by those who may be interested in the explanation. It is enough for us to shew that it was there, soon after the 14th of November, 1818; which we have done by M'Culloh's two letters of that date to Jonathan Smith. *(b)* These letters, taken in connexion with those of October 26th and November 9th, *(b)* furnish us with some other important particulars, in relation to the list then transmitted. First that it varied from former returns: secondly that this variation consisted in representing the amount of loans upon stock as less, and that of loans on personal security as greater, than in the preceeding statements: Thirdly that it was produced by the discovery and correction of some errors in the books, which consisted in charging to the account of discounts on stock some loans, which ought to have been charged to personal security: and fourthly that the correction of these errors had produced the delay, in furnishing the statement. Here the leading and important fact, thus officially communicated to the Parent Board, through its Cashier Jonathan Smith, the fact which gives importance to all the rest, on which the whole matter turns, is that errors had been discovered in the books: and this assertion we now know to be absolutely false. It is proved to be so by the production of the books

(*a*) See page 66. (*b*) See pages 58 and 59.

which have been open for more than a fortnight to the inspection of the Traversers and their Counsel, without the least attempt on their part to shew any such error, or indeed the slightest intimation that any such exists. Here then is a plain and palpable "suggestio falsi" to the Parent Board, in answer to a clear and positive call for official information.

It was followed up by an equally palpable "suppressio veri," in relation to the Branch Board: for all these four letters are withheld from the letter book, the official record of the Branch Bank, where it was the duty of the Cashier, James W. M'Culloh, the writer of all these letters, to see that they were faithfully entered, for the information of the Board. To this point the testimony of William L. Gill, the corresponding clerk, and the letter book itself *(a)* are full and conclusive.

Why this suppression of important official communications? I answer that they were thus kept out of view by the Cashier, in violation of his duty and his oath, *(b)* to hoodwink and deceive the Branch Directors; who would instantly have detected the falsehood had the letters been there, and exposed it by a reference to the books.

There is another falsehood in the last of these letters, which was told to prepare the way for the next step, in this disgusting series of frauds and impositions. It says, in relation to the errors which the writer pretends to have discovered in the books, "these variations adjusted, the next statement will accord; unless some small loan is taken up or paid off." If he meant that the next statement would accord with that which he then transmitted, no doubt he told the truth: but this was not what he meant; or at least not all that he intended to give the Parent Board to understand. He intended to tell them, not merely that the next statement would accord with that which he had transmitted, a very superfluous piece of information, to say the least of it; but to make them understand that it would accord with the true state of facts, as appearing on the books. We shall now enquire how he kept, and how he intended to keep, this promise.

This brings me to the Stock List and Pay List of March 8th 1819, which are clearly proved to be the joint act of Buchanan and M'Culloh. But before I proceed to consider them particularly, permit me to recal the attention of your honors for a moment, to the

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(*a*) See page 59. (*b*) See the oath, page 140.

resolution of February 19th 1819, by the Parent Board, to which I have already had occasion to advert, in a former part of the argument. I shall therefore notice it now very briefly (*a*). Its terms are so precise and positive, that evasion or escape seemed hardly possible. They called not only for a list of all the notes then discounted on stock, in the Baltimore Branch, with the names of the drawers and endorsers, and a particular description of the kind of stock and of the rate at which it was hypothecated, but for copies of the several instruments by which the several hypothecations had been effected. The tone and character of this call clearly show, that the Parent Board at the time of making it had obtained correct information, concerning the nature of the game that had been played in the Baltimore Branch, and was firmly resolved to probe it to the bottom.

We have seen the first effect of this order, on the President and Cashier of the Baltimore Branch. It produced the miserable exhibition which took place at the Branch Board, on the 8th or 9th of March 1819; and which would excite pity, if every other feeling were not precluded by indignation and disgust. It drew from them also the stock list and pay list of March 8th 1819, which were intended as an answer to it; or rather as the evasion of an answer, when it was no longer possible to remain silent.

Let us now turn to these two papers, which are in evidence under the official signature of James W. M'Culloh as Cashier, and are proved to have been presented to the Parent Board, by him and James A. Buchanan, (*b*) who thus made them his own act. Let us see how they obey the call, which they profess to answer.

To begin with the stock list (*c*). The first remark to be made on it is, that it represents James W. M'Culloh as a borrower on stock, to the amount of $3,100 only; which was secured by the actual pledge of 31 shares. But the real list of stock loans, as they stood on the books of the Branch Bank on that day, (*d*) shews that he was in fact a borrower under the name of stock loans, to the amount of $592,201 01. This falsehood is as glaring as it is gross.

The next is very little less so. This list of March 8th 1819 returned to the Parent Board, represents S. Smith and Buchanan as borrowers on stock, to the amount of only $235,375, on two notes, one for $97,875, and the other for $137,500. (*e*) But it appears

(a) See pages 28. (*b*) See page 88, 89, 90. (*c*) See stock list. (*d*) See Page 80 (*e*) See page 76.

from the real stock list of the 8th of March 1819, that they were on that day borrowers on pretence of stock security, to no less an amount than $870,801 77, *(a) on nine notes. So the list transmitted* to Philadelphia, represents George Williams as a borrower on stock, to the amonnt of $410,025 on two notes, *(b)* while the true list of the same day shews, that he was a borrower to the amount of only $159,833 34 *(c)* on one note. This is the third falsehood told by this statement to the Parent Board; and taken in connexion *with the second it makes out a fourth, of a very curious and significant* character. The loans of S. Smith and Buchanan and George Williams as represented by this list, amount precisely to the sum of $645,400, which as we have already seen, it was the object of the false entry of November 14th 1818 to represent, as the whole amount of the stock loan of this association: and as the list keeps James W. M'Culloh in his character of a member of the association, entirely out of view, the object of the false entry is here effected, *and the whole fraud stands confessed.* To borrow a very expressive phrase from the French, "it leaps to the eyes." It leaves those who would gainsay it without a reply, and all who hear the proof without a doubt. The whole amount of the stock loans of these persons is represented to be $645,400, precisely the amount of unappropriated stock security, which rating stock at $125 to the share, they then possessed: while the real stock list of the same date proves, that their loans to themselves under pretence of stock *security, amounted in fact on that day to $1,629,436 12 (d)*; nearly three times as much! Thus it was that they answered that part of the order of February 19th, which required them to state the amount of loans upon Stock.

To that part of it which called for a list of *all* the notes discounted on stock, with the names of the drawers and endorsers, an answer equally false is given. All the notes of James W. M'Culloh, to the number of fourteen, and the amount of $592,201 01 *are suppressed.* Of those of S. Smith and Buchanan, nine in number, one only is given, that of $97,875; and instead of the other eight a new note is fabricated for $137,500, so as to make their stock debt appear to be only $235,375, instead of $870,801 77, its true amount on that day *(e)* while George Williams, instead of one note of $159,833 34, is represented as having two amounting together

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(a) See page 82. (b) See page 76. (c) See page 83.
(d) See page 84, and the note there. (e) See page, 82.

to $410,025; which are entirely fictitious. Thus twenty two notes are suppressed; and of the four returned three are fabrications, made to suit the occasion.

The resolution further requires, an account of the rate at which stock was hypothecated, and copies of the instruments of hypothecation. In answer to this part of the call the list returned states that S. Smith and Buchanan's note of $97,875, endorsed by George Williams, was secured by 783 shares of United States Bank Stock, at $125 to the share; and that of $187,500, with the same endorser, by 5,500 shares, at 25 per cent advance, over and above their par value, at which they had been already pledged in the Parent Bank (*a*). It also states, in relation to the two notes returned for George Williams, that one of them, for $221,875 endorsed by Amos A. Williams, was secured by 1775 shares, at the rate of $125 to the share, and the other, for $188,150 endorsed by S. Smith and Buchanan, by 25 per cent advance at the Baltimore Office, on 7526 shares, in addition to their par value, at which they were pledged in the Parent Bank: This makes up precisely the stock security, which at the rate of $125 to the share this association had at their disposal; that is 2558 shares in the Baltimore Branch, and 13026 shares pledged only at par in the Parent Bank. Thus the whole stock list returned, in compliance with the order of February 19th 1819, is made to agree with the statement on the books, which had been produced by the false entry of November 14th 1818. But it must be recollected that in this point, as well as in all the rest, it imports an absolute and intentional falsehood. It represents this stock as having been actually pledged and hypothecated; while we know from the evidence in the case, that no hypothecation of it whatever had been made, and it remained entirely at their own disposal.

Thus the stock list of March 8th 1819, returned in obedience to the peremptory and pressing call of February 19th was false and deceptious, wilfully false and intentionally deceptious, in every important point to which the call had been directed. We shall soon see how well it was seconded, by the Pay List by which it was accompanied.

It will be recollected by the Court that these persons, for some reasons which they have not thought fit to explain, and we have not been able to discover, chose to represent their joint debt to the Branch Bank, as amounting to the precise sum of $1,540,000. In

(*a*) See page 76.

this stock list they had disposed of $645,400 of this sum, by placing it to the *account* of *loans on stock*. The rest, consequently, was to be represented as a loan on personal security, or in the mercantile language, on bills receivable. For this purpose a "Pay List," or a list of loans on personal security, was constructed at the same time with the stock list, and presented with it, by the Traversers in person, to the Parent Board, on the 16th March 1819. At the bottom of this pay list three notes were inserted, and consquently represented as notes discounted by the Board of Directors, in the usual way. One was for $251,250, and was stated to have been drawn by George Williams, and endorsed by S. Smith and Buchanan, for whom it was stated to have been discounted: one for $325,000 said to be drawn by S. Smith and Buchanan and George Williams, endorsed by James W. M'Culloh as Cashier, and discounted for S. Smith and Buchanan: and the third for $318,350, drawn like the former by S. Smith and Buchanan and George Williams, endorsed by James W. M'Culloh and discounted for S. Smith and Buchanan. These three notes amount to $894,600; and with the $645,400 attributed in the stock list to stock security, make up the total amount of $1,540,000, (*a*) which these persons chose to represent, as the whole of their joint debt to the Baltimore Branch.

Now it appears in full proof, that none of these notes had ever been brought before the Directors of the Baltimore Branch for Discount; and that two of them, the first and third, were absolutely fictitious. Thus an absolute and wilful falsehood was told to the Parent Board, by the production of this Pay List, which necessarily represented all these notes as having been approved by the Branch Board. Two of them, like three of those on the stock list, were mere fabrications, to suit the occasion: and although one, that for $325,000, was a real note, yet the falsehood in relation to it was the same, in substance and effect.

The essence of this falsehood consisted in representing this note, as a note which rested on such personal security, as the Branch Board had judged sufficient, and had consented to accept, by authorising the discount in the usual and regular manner: while in fact, as is fully proved, it had never been seen by the Board, but was dicounted by the parties themselves without its knowledge, as a stock note, under their assumed power over stock loans.

(*a*) See page 85.

I feel rejoiced, may it please your honours, that but one remark remains to be added, to this loathsome and sickening exposure.— It is short, but very important, in explaining the views and conduct of these persons. Recollect that James W. M'Culloh was the Cashier of the Baltimore Branch, appointed and removeable by the Parent Board. Reflect how indispensible it was to these persons, in the further prosecution of their plans, to retain him in his office. No frauds can be practised on a Bank, without the participation of the Cashier, or at least his connivance: which is generally secured by permitting his participation. Hence James W. M'Culloh, although acknowledged to have been wholly destitute of property, was admitted by these persons as an equal associate, in those vast and hazardous speculations, on which their ample credit, and real or supposed fortunes were staked. *(a)* Hence too his name as a borrower, either on stock or personal security, except to the very moderate amount of $3400, on a real pledge of stock at par, is withheld from both the lists in question. The real stock account of March 8th, 1819, exhibits him as a borrower on stock, to the amount of very nearly six hundred thousand dollars. *(b)* On the fictitious lists of that date, laid before the Parent Board, his name does not appear as a borrower, except for the moderate sum of $3400, secured by a real pledge; adequate and consequently not an object of censure or dissatisfaction. His associates take on their own heads the whole sins of the association, which could no longer be concealed, and strive to keep him out of sight; in hopes that whatever may be their fate, his office, far more important to them than their own, may be left undisturbed. Comment on this fact is unnecessary; because it could add nothing to the force or the clearness of the conclusions, to which every mind must be impelled.

I am very happy, may it please your honours, to be able to say, and I am sure that you with all your patience must be glad to hear, that I have now arrived at the last scene of this miserable drama. Its subject matter is furnished by the paper *x*; the statement presented by the Traversers in Philadelphia as their joint act, some time in March 1819.

It is contended by my learned friends on the other side, that this paper was presented to the Parent Board, on the 16th of March, 1819, with the stock and pay lists of the 8th of that month, and

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(a) See page 112. *(b)* See page 80

was intended as an explanation of them. In support of this position they rely on some expressions in the report, which was made on the 17th of May, 1819, to the Parent Board, by a committee composed of the members residing in Baltimore; *(a)* where this paper is mentioned as "the statement of Messrs. S. Smith & Buchanan, George Williams and James W. M'Culloh, handed to the Board at Philadelphia," but the expression "handed to the Board," is to say the least of it vague and equivocal: since it does not specify by whom the statement was handed to the Board; whether by the parties who made it, or by the committee appointed on the 16th of March, 1819, to hear and report on their explanations and propositions. *(b)* If the subsequent committee did intend to state, in their report of May 14th, that the paper was handed to the Parent Board by these parties themselves, it would only prove that they made a mistake, in a fact which they cannot have supposed to be of any importance, and of which they might well be ignorant; since it does not appear that any of them were present when the first committee was appointed. They knew, by the reference of this paper to them among the other documents, that it had been laid before the Board, as a statement of the stock and stock debt of these parties: but whether presented by the parties to the Board, in the first instance, or first to the committee and by it to the Board, is a fact which though now of some importance, could not have appeared so to the committee of May; who consequently cannot be supposed to have taken any steps to ascertain it.

But it is, I apprehend, clearly impossible to believe, that this paper was presented by the parties to the Parent Board, on the 16th of March, 1819, with the stock and pay lists of the 8th of that month. To present these three papers together, would have been the excess of folly and absurdity. The great and leading object of all the falsehoods contained in the stock and pay lists, indeed I may say the sole object with which they were so carefully and laboriously fabricated by these persons, was to represent themselves to the Parent Board, as borrowers on stock to no greater amount than $645,400, out of $1,540,000, and the remaining $894,600 as having been discounted for them by the Branch Board, on personal security, in the usual and regular way. For this purpose they suppressed some notes, and fabricated others; till at length they compelled the lists to present this appearance. But the paper *x* flatly

(a) See page 102. *(b)* See page 93.

contradicts all this elaborate tissue of misrepresentations, and fairly confesses the truth, that the whole $1,540,000 consisted in loans on stock. It is, I apprehend, impossible to suppose, that men so intelligent as the Traversers, even in the very perplexing situation in which they found themselves, should have taken the trouble to fabricate two papers, for the express purpose of immediately contradicting them by a third, presented at the same moment. It is certainly a very singular explanation, which my learned friend imputes to his clients. He represents them as going post haste to Philadelphia with two lists in one hand, and one in the other. By the first two they say to the Directors of the Parent Bank, "we have borrowed on stock to the amount of only $645,400; which we had stock to secure, although we omitted to pledge it. The rest of our debt, amounting to $894,600, and making up the total amount of $1,540,000 which we owe to you, was contracted by discounts on personal security, which the Branch Board granted to us in the usual way. At the same moment they present the third list, in the other hand, by which they say "this whole tale is a fable, which we have invented for your amusement and our own: for the fact is, and so we wish you to understand, that the whole of our debt of $1,540,000 was contracted on pretence of stock security alone; which indeed we did not give, but the nature, situation and extent of which, as we now propose to give it, this paper will explain."

Away, may it please your Honours, with such pretences, which are unworthy of serious refutation, and scarcely deserve even to be laughed at. They are produced by the desperate exigencies of the defence; and sincerely do I pity men of sense and honour, when they find themselves obliged to rely on such arguments. The truth undoubtedly is, that the statement x was an after thought of these persons, a final refuge, when they found themselves obliged to abandon the stock and pay lists.

The minute of March 16th, 1819, (*a*) expressly states, that after the stock and pay lists had been presented, *verbal* explanations were offered and made by these persons: and that the whole subject, including of course the lists and explanations, was referred to a committee.

Before this committee then the parties would go with their lists, as a matter of course. It consisted of two eminent lawyers, accus-

(*a*) See page 90.

tomed to the investigation of matters of fact, whom we may suppose from their situation as Directors, to be familiar with accounts and *banking operations*. There were also three mercantile gentlemen, with whom I am not particularly acquainted; but we are authorized to infer from their appointment as members of this committee, that they were skilful accountants and bankers. What would be the language of such a committee to the Traversers, after inspecting the stock and pay lists, and enquiring into the matter? It would no doubt be expressed in guarded and civil terms; but it would amount to this: "Come come, gentlemen; these papers will not do. You must abandon all these subterfuges, and speak to us as men of sense and business; with whom you have to adjust this concern, as well as you can. Tell us the truth therefore, and let us hear what you can do." To this there was no reply. The truth or something that might appear so to the committee and the board, must at length be told: and accordingly the statement x (*a*) was prepared and submitted to the committee, *as the basis of an adjustment* which the parties proposed to make. The committee receive it as final, and as such refer to it in their report of March 30th, 1819, (*b*) of which though not named or referred to in terms, it is manifestly the basis. Let us bestow a few concluding remarks on this statement, which we shall soon find to be as destitute of truth as any of its predecessors. It indeed confessed the great truth, which could no longer be concealed, that the whole debt was contracted on the pretence of stock security. In some of the details it certainly was correct, and probably in others: but in some of them, and material ones too, I shall show it to be false.

In the first place it represents their whole debt to the Baltimore Branch, as amounting to no more than $1,540,000. This is the total of the several sums, represented as having been borrowed at the Branch, on the 13,026 shares hypothecated at par in the Parent Bank, on the 2,558 shares in the Baltimore Branch, on 13,000 placed in London and elsewhere at par, on 10,050 placed in New York and Liverpool at par, *and on the whole mass of their stock*, 47,398 shares, at an advance beyond 125 per cent. Now we know that the joint stock debt amounted not to $1,540,000, but to $1,629,436 12, as appears by the real account of stock loans, as they stood upon the books of the Baltimore Branch, on the 8th of March, 1819. (*c*) This statement varied also from the amount of the stock notes,

(*a*) See page 91. (*b*) See page 93. (*c*) See pages 83, 84.

actually delivered by James W. M'Culloh to his successor Mr. White, on the 20th of May, 1819; which was $1,512,136 12, (a) Mr. White has explained to us how this sum was reduced to $1,540,000, at the particular request of M'Culloh, for the express purpose of making it agree with the statement presented at Philadelphia. (b) It is easy to understand why they should wish to make the notes agree with the statement: but why they did not make out the statement in such a manner as to agree with the notes, is not so readily discovered. I shall presently offer some conjectures on the subject; but it is sufficient now to establish the fact, that in this particular the statement presented at Philadelphia was untrue.

It is equally so in another, of much greater importance. It states, expressly, that they had borrowed $318,350 at the Branch Bank, on the whole mass of their stock, at a rate beyond 125 per. cent; that this loan was made when stock was at $150 the share; and that its object was to secure the Branch from loss. This evidently refers to the exploded tale, of supporting Dennis A. Smith and the Mechanics' Bank, by making purchases of stock from him, which might enable him to pay his debt to that Bank, and thus enable it in its turn to pay its debt to the Branch. We know that the debt from the Mechanics' Bank to the Branch had been greatly reduced, and the balance placed in a safe and satisfactory situation, long before the 5th of August, 1817, when the first of these stock loans was made. We also know that before the same epoch, the Mechanics' Bank itself was placed in a safe and easy condition, with "unimpaired credit." Consequently we know, that in this particular the statement x is false.

The sum fixt on for the amount of the loans made above 125 per. cent, for this benevolent purpose, presents an enigma which I have in vain attempted to unravel. It is plainly an arbitrary sum: for it was just as easy to say that loans to any other amount had been made above 125 per. cent, as to the exact amount of $318,350. It is quite clear that it is not the true amount: for the stock notes delivered to Mr. White amounted to $1,512,136 12, (a) and the real amount of stock loans was $1,629,436 12. (c) This $318,350 is obviously the balance that remained, of what they chose to represent as their stock debt, after appropriating as much of it as they could, to stock security subject to their controul.—

(a) See pages 38, 39. (b) See page 39. (c) See page 84.

Consequently the larger they made the debt, the larger this balance would be. If they had stated the debt at its true amount $1,629,136 12, the balance to be represented as a loan on the whole mass of their stock, at a rate above $125 to the share, would have been $407,878 12 instead of $318,350. If they represented the debt at $1,512,136 12, the amount of the stock notes delivered to Mr. White, this balance would have been $320,486 12, instead of $318,350. In either case it would have been but to increase this balance, and say that it was taken on the whole amount of their stock, above $125 to the share. One may easily conceive that it would be desirable to these persons, to make their stock debt appear upwards of $89,000 less than it really was: but why should they wish it to appear less by so trivial a sum as $2,136 12? If this sum of $2,136 12 had been added to the $318,350 so as to make it $320,486 12, it would have sounded just as well; and the latter sum might as well have been taken above $125 per. cent, and as easily justified, as the former. I have always believed, may it please your honours, that there was some connexion between this sum of $318,350, and the final payment made in December 1817, by Dennis A. Smith, to the Mechanics' Bank. That payment amounted as he has stated himself, (*a*) to *about* $300,000. It was made in part by the transfer of promissory notes, of the Kimmels and other persons, to the amount of *about* $105,000. I have always supposed that these notes amounted in fact to $123,350, instead of $105,000; so as to raise the whole payment to this precise sum of $318,350, which was thus assumed as the amount of loans above 125 per. cent, to give colour to the pretence that they were made to save the Branch Bank from loss. A late unpleasant occurrence in the Mechanics' Bank, has prevented me from making the enquiries which I intended, for the purpose of clearing up this mystery. Whether my conjecture on the subject be well founded or not, must therefore remain uncertain: but thus much is certain, that in alleging this loan of $318,350 to have been made for the purpose of saving the Branch Bank from loss, as well as in the total amount of loans upon stock in the Baltimore Branch, the statement *x* like all its forerunners is false and deceptious.

Permit me now, may it please your honours, to call back your attention for a few moments, to the wide field over which we have passed. Permit me to remind you of the charge preferred against

(*a*) See page 125.

these Traversers, by the indictment under consideration, and to present to your view a brief summary of the evidence adduced in its support.

The indictment alleges in substance, that the Traversers fraudulently combined to cheat and injure the Bank of the United States, by getting its property to a large amount into their possession, through false and fraudulent devices and indirect means, for the purpose of keeping and using it two months, without paying interest, or giving any security for the repayment of the principal. Is this charge sustained by the proof? Such is the question which you are called on to decide. In deliberating on the answer to it, your honours may derive some assistance from a short recapitulation of the leading facts which have been established. I speak not of those which may admit of controversy, of which indeed there are very few, but confine myself to such as have been clearly and incontrovertibly made out.

The first is, that these persons obtained from the Branch Bank in Baltimore, of which one of them was President and the other Cashier, the sum of $1,581,836 12, between the 5th day of August, 1817, and the 14th day of November 1818, under the name of stock loans: which sum they increased to $1,629,436 12 before the 8th of March, 1819, by new loans of the same character. This is not doubted or denied.

It is proved in the next place, that for none of these loans was a single share of stock pledged, any where or in any manner; and that the whole amount of stock which they have shewn a power in themselves to pledge, at any time during this whole period, would have covered only $645,400, rating it at 125 per. cent.— This also is undenied.

It is proved further, and not denied or doubted, that they made the whole of these vast loans to themselves, by their own authority, without the saction of the Branch Board.

It is proved that they had no authority from the Parent Board for making such loans, or any loans whatever: nor is any such authority now pretended on their part. On the contrary it is expressly admitted that they never had any.

It is proved that while they were making these loans to themselves, and for the purpose of preventing the Branch Board from inquiring into the subject, they asserted to the Directors individually, and to the Board, that they had express authority from the Parent Board to make such loans: which assertion, though undenia

bly and wilfully false, had the intended effect, of preventing any interference on the part of the Branch Board.

It is proved and not denied, that in all the books and statements laid by these persons before the Branch Board, where any mention was made of these loans or any of them, they were invariably represented as "Stock Loans;" that is as Loans secured by a regular adequate and effectual pledge of stock, in the hands of the Cashier; who was himself one of the persons making this representation.

It is proved and not denied, that the duty of taking the regular pledges of stock for such purposes, belonged solely to the President and Cashier; and that it was the exclusive duty of the latter to keep possession of the stock pledged, with the documents effecting and proving the pledge.

It is proved and not denied, that none of the books or statements laid from time to time before the Branch Board, and representing these loans as "Stock Loans," made any mention whatever, or were required or expected to make any, of the Stock pledged to secure the loans or any of them, its situation, description or amount: the whole of that matter being confided exclusively to the President and Cashier by the regulations of the Bank.

It is proved that the regulations and orders of the Parent Bank, on the subject of stock loans, expressly require the stock to be actually and formally hypothecated, in the hands of the Cashier; and that where the loan granted on it exceeded its par value, two names, that is a drawer and endorser, "to be approved by the Branch Board" should be given for the excess.

It is proved that about the time when the loans in question commenced, it was suggested to the Branch Board, in the hearing of these persons, that as in stock loans the stock itself was the security solely relied on or regarded, it was an useless ceremony to bring them before the Board, and they might be safely left to the President and Cashier: it being clearly understood that stock, to the par value, was to be effectively pledged.

It is proved that it never was intimated by these persons to the Branch Board, or understood by it in any manner, that they were in the habit of granting loans to any persons whatever, much less to themselves, without any pledge of stock, or beyond the par value of the stock actually pledged.

From all which it clearly results, that when these persons caused the notes in question to be placed as "stock notes," on the books

and statements laid before the Branch Board, they represented them by that act as notes secured by an actual and effective pledge of stock, at par; which representation they intended to make, and knew to be untrue.

And thus it is clearly established, that they employed false pretences, and indirect means, with the fraudulent design of getting this money into their hands. This fraudulent design is further established, by the fact fully proved and not denied, that for the purpose of more effectually concealing these practices from the Parent Bank, and the Baltimore Branch, they deliberately made a false entry in the books of the Branch; wrote false letters to the Parent Board; withheld copies of those letters from the records of the Branch; and deliberately made false returns to the Parent Board, in answer to its repeated and pointed calls, for correct information on this subject.

In relation to the interest it is proved, and not denied, that they withheld at least $16,000, of interest, and included it in the renewals of their notes, at a time when they had the most ample means of payment: that the whole of this sum remains to this moment in effect unpaid, and it is irretrievably lost by their insolvency, together with a very large part of the principal: that they deliberately included a further portion of interest, to the amount of $7000, at a time when they knew themselves to be utterly ruined: and finally, that after this irretrievable and hopeless ruin had overtaken them, they proceeded with a full knowledge of their own situation, to withdraw from the Bank under the same false pretences, and by means of the same fraudulent devices, the further sum of $31,000; which they applied to their own use, without the least prospect or hope, and consequently without the least intention, of paying principal or interest.

And as to their sole pretence of justification or excuse for taking this money, their plea that they took it to make purchases of stock from Dennis A. Smith, for the purpose of enabling him to pay his debt to the Mechanics' Bank, and thus to save that Bank from ruin, and enable it in its turn to pay the debt which it owed to the Baltimore Branch; it is undeniably proved by the dates of the several transactions, that their first and second purchases from Smith were made *in April 1817, at least five weeks before their* stock discounts begun, the first of which was on the 5th of August in that year: and that before the third and last purchase, in December 1817, nearly the whole amount of their vast loans to them-

selves was completed: so that as relates to a very large part of these loans, there could not possibly have been any connexion between them and the purchase from Smith.

It has also been proved, that before the first purchase from Mr. Smith took place, he had made a payment to the Mechanics' Bank of $430,000, which removed all apprehensions about its solvency, and placed it in a situation of "unimpaired credit:" and that he effected this great payment, by means wholly unconnected with any purchase of stock, made from him by those Traversers.

And as to the conspiracy it clearly appears, and is not denied or called in question, that throughout the whole transaction, and in all its parts, these two persons understood each other perfectly, had a common interest and a common object in view, and acted in concert for its attainment; which is the most complete evidence of a conspiracy between them that can be required.

Such may it please your Honours is the charge, and such the proof. Whether the proof supports the charge, is the question which you are to decide, under the sanction of your oaths, and on the basis of law fixt by the Court of Appeals.

The counsel then proceeded to discuss a question of law, which had been raised on the indictment: whether the averment that the Traversers conspired to obtain this money from the Bank "for the purpose of having and enjoying the use thereof for a long space of time, to wit: for the space of two months, without paying any interest, discount or equivalent therefor" was material and ought to be proved. He had endeavoured, he said, with what success it was not for him to determine, that this averment was not to be understood as meaning, that the Traversers did not intend ever to pay the interest; but not to pay it regularly as it became due, or when the discounts were made; in which sense it was unquestionably proved: and that even in its strictest and most literal sense, it was fully supported by the proof. He would now endeavour to shew that it was immaterial; and consequently that whether it had been proved or not was wholly unimportant.

For this purpose he laid down two positions: First, that the offence was complete without the averment; since it consisted in the fraudulent combination or conspiracy to get the money; and in no degree depended on the use which the conspirators intended to

make of it, or the manner in which it was their purpose to dispose of it, after it should come into their possession. This, he contended was merely the inducement to commit the crime, and not the crime itself; of the definition or essence of which this inducement or object formed no part. In support of this position he cited,

1. Leache's Crown Law, - - 276. The King, *vs.* Eccleos.
2. Massachusetts Reports, - - 336. Judd's case.
Ibid. - - - - 536–8. Tibbett's case.
The Opinion of the Court of Appeals, Appendix, - - 100. Macklin's case.
Ibid. - - - 101. The King *vs* Benengen
Ibid. - - 102. The King *vs* Gill & Henry.
3. Chitty C. L. - - - 569, 308, 611, 615.

Secondly, that the averment was consequently immaterial and impertinent, in a legal sense, and need not be proved. For this he cited,

1. Chitty, 228, 233, 246.
2. Leach, 594, Holt's case.
2. Massachusetts' reports, 536.
"what is meant by substantial averments."
2. Campbell, 582, 584, 646.
1. Chitty 245–6.

He also cited Hevey's case, 1. Leach, C. L. 234, and the case of Watson and others, 2. Campbell, 234, which might, he said, be supposed to countenance a contrary doctrine. But he would endeavour to shew that they did not; and that if they did, they must yield to the authority of so many contrary decisions.

In Hevey's case the point did not arise. It was a mere dictum. The averment was there clearly material; because the fact averred was a constituent part of the offence, without which the indictment would have been clearly insufficient. The case in 2nd Campbell, 234 he insisted was very loosely and imperfectly reported: a mere nisi prius decision: and established this principle, if it could be understood as establishing any; that when a man was indicted for conspiring with three other persons by name, proof that he conspired with two of them only, without knowing any thing of the third, would not support the indictment. With the soundness of this principle he had nothing to do; since it clearly did not apply to the case before the court.

Mr. Mitchell argued in support of these positions and cited,

1. Chitty, 109, 251 260, 294.
2. Easte, P. C. 515, 514, 517, 786–7–8, 988.

The Attorney General also supported them; and made a new point.

This averment, he said, was coupled in the indictment with another: That they conspired to take this money, not only with intent to keep it two months without paying interest, but also without giving security for the repayment of the principal.

He contended that the latter was clearly proved, and that it could not be necessary to prove both in such a case. He cited,

2. Leach, C. L. 702.
2. Easte, P. C. 421.
1. Leach, 477.

Mr. Murray, on the same side, compared this case to the cases of indictments for a higher offence, under which conviction of an inferior offence may take place: provided enough be averred to shew that such an offence was committed: and he cited

1. Chitty, 228, 233, 251, 252, 18, 51, 249, and 250.
2. Leach, 591, and
2. Massachusetts Reports, 536.

Mr. Raymond, Mr. Kell and General Winder argued on the other side, and contended that the averment in question was not only material, but constituted the main pillar of the indictment: the hinge on which the offence turned. They reviewed at length authorities cited on the part of the prosecution, but adduced no new ones. The Attorney General replied and closed the argument.

The case being thus concluded on the 9th of April, the Court held it under advisement till the 11th, when Judge Hanson pronounced the decision of the Court; in which he stated that he and Judge Ward, the other associate, concurred. This decision was, that the Traversers were not guilty "*in law or in fact*;" and that a judgment of acquittal must be entered.

Judge Dorsey, the Chief Judge, then declared that he dissented from this decision, and proceeded to deliver the following opinion.

JUDGE DORSEY'S

OPINION.

It is my misfortune to differ in opinion again, from my brother Judges. On the argument of the Demurrer to the Indictment, it was my opinion, that the facts therein charged constituted an indictable offence, under the principles of the Common Law; and the Court of Appeals by an unanimous decision, have sanctioned my view of the case. And now, upon a full consideration of the testimony, I am prepared to say, that James A. Buchanan and James W. M'Culloh, the Traversers, are guilty of the offence imputed to them by the indictment. The testimony delivered in the cause, tho' voluminous, is simple in its results—The facts are not numerous, and most of them have been proved beyond all controversy. The Traversers together with George Williams are charged with a conspiracy, fraudulently "by wrongful and indirect means, to cheat, defraud and impoverish the President, Directors and Company of the Bank of the U. States, and by subtle, fraudulent and indirect means and divers artful, unlawful and dishonest devices and practices, to obtain and embezzle" the money of the said Bank to the "amount of one million five hundred and forty thousand dollars," from and out of the Office of Discount and Deposit of the City of Baltimore, without the knowledge, privity, or consent of the President, Directors and Company of the Bank of the United States, and without the knowledge privity or consent of the said office, for the purpose of having and enjoying the use thereof for the space of two months, without paying any interest, discount or equivalent for the use thereof, and without securing the payment thereof to the said Corporation."

What are the facts in the cause? It has been most incontrovertibly established, that Buchanan and M'Culloh the Traversers up to the 12th of November 1818, had taken from the funds of the Office of Discount and Deposit of the City of Baltimore, one million five hundred and forty thousand dollars, for the benefit of themselves and George Williams in different proportions, on the representation that stock had been pledged to secure the repayment thereof to the Bank. This enquiry then necessarily presents itself: under what authority was this immense sum drawn from the Office, by the President and Cashier; and was stock pledged for its reimbursement? By the 14th section of the Act incorporating the subscribers to the Bank of the United States, the directors are empow-

ed to establish Offices of Discount and Deposit, wherever they shall think fit within the United States, or the Territories thereof, and to commit the management of such Offices, and the business thereof respectively, to such persons and under such regulations, as they may deem proper, not being contrary to Law, or the Constitution of the Bank. The Directors of the Parent Board, in virtue of this power, established an Office of Discount and Deposit at Baltimore, of which James A. Buchanan was appointed the President, and James W. M'Culloh the Cashier; and they also prescribed various rules for the government of the Offices, among which were the following:—Article 14th. All bills and notes offered for discount, shall be laid before the Board of Directors, by the Cashier, on the days assigned for discount, together with a statement of the funds and situation of the Office, for their information. Article 15th. Discounts shall not be made on personal security, without two responsible names, (the firm of a House, being considered as one name only); but if stock of the Bank of the United States, funded debt of the United States, or such other property as shall be approved by the Board, be deposited and pledged to an amount sufficient to secure the payment with all damages, one responsible name may be taken. Article 16th. On each application for discount, every Director who may be present, shall be held to give his opinion for or against the same; and no discount shall be made without the consent of three fourths of the Directors present. And all bills and notes discounted, shall be entered in a book, to be called the credit book, in such manner as to discover to the Board at one view, on each discount day, the amount which any person is discounter, or is indebted to the office, either as payer or endorser". And the 22d Article prescribes, that "the President and Cashier of the Office shall take and subscribe an oath or affirmation, that they will, to the best of their abilities, perform the duties assigned, and the trust reposed in them." Such were some of the general rules prescribed by the Parent Board, for the government of its Offices. I deem it unnecessary to notice the resolutions of the Parent Board of the 18th and 27th December 1816, which have been given in evidence, as they were limited in their operation. By a resolution of the United States Bank, passed on the 25th July 1817, the *Offices* of Discount and Deposit are empowered to grant loans on the notes of the borrower, payable to the Cashier, and secured by a pledge of stock of the Bank, or funded debt of the United States, at the par value thereof, equal to the amount loaned; and the resolution further provides, that the

weekly statement of such Offices, shall exhibit the amount of such loans, distinct from the amount of bills and notes discounted; and that blank Powers of Attorney to transfer or sell the stock so pledged in conformity to powers used for similar loans obtained of the Mother Bank, shall be transmitted to the Offices respectively. And by a resolution of the Parent Board of the 26th August 1817, it is declared to be expidient, that loans on the Stock of the Bank be extended to the rate of one hundred and twenty five dollars per share upon notes to that amount, with "two approved names".

By those two resolutions, no authority was communicated to the President and Cashier alone, to discount notes secured by the pledge of stock. The resolution of the 25th July declares that the *Offices* may grant loans on a pledge of stock at its par value, and the note of the borrower payable to the Cashier. As the pledge of stock at this rate, was considered as the efficient security, (without reference to the solidity of the borrower) it would seem that the power of granting such discounts might have been confided without injury to the institution, to the President and Cashier alone; whose duty it would have been, to see that the stock was duly hypothecated to secure the loan. But the resolution of the Parent Board of the 26th August emphatically requires, that Loans granted on the pledge of Bank stock, at the rate of one hundred and twenty five dollars per share, shall be further secured by two approved names: names to be approved by whom? By the President and Cashier alone, or by the Directors in conformity to the 15th article of the Bye Laws; which prescribes among other things, that no discount shall be made without the consent of three fourths of the Directors present? The pledge of stock alone, under the last mentioned resolution, was not deemed a sufficient security, for Loans on stock rated at one hundred and twenty five dollars a share; personal security other than that of the borrower was required: the security of two approved names. The sufficiency, therefore, of the personal security, in addition to the pledge of Bank Stock, was a matter of judgement and advisement: and the approval or rejection of such security was, therefore, necessarily referred to the Board of Directors of the Branch, to whom it belonged to decide, and who were bound under the 15th Bye law to decide, on the propriety of granting the required discount. That the power to the President and Cashier of the Office of Discount and Deposit at Baltimore, to grant discounts on a pledge of stock, rating the share at one hundred and twenty five dollars, was not communicated by the resolution of the

26th August I hold to be most manifest; and that such an authority was granted by the Board of Directors of the Branch (supposing them to possess the power of substitution, a question on which it is not necessary to give an opinion) is disproved by the testimony in the cause; for none of the witnesses examined either on the part of the prosecution or the Traversers, pretend that this power was delegated by the Board of Branch Directors, to the President and Cashier alone. And it is fully proved by several witnesses, who were Directors, that the Traversers, as President and Cashier, claimed the exclusive right of granting discounts on the pledge of stock, and that too under an authority derived from the Parent Board. But even supposing for the sake of the argument, that the Traversers honestly thought they alone, were invested with the power of granting discounts on the pledge of stock, still the question recurs, did they when they took from the vaults of the Branch one million five hundred and forty thousand dollars, under the pretence of stock loans, pledge stock to that amount, rating stock at $125 a share; or had they and George Williams the power of pledging stock at that rate, to secure the reimbursement of this large sum of money. That such a pledge was given is not pretended, although the resolution of the 25th July imperatively requires, that Powers of Attorney to sell and transfer pledged stock shall be executed. Had they, then, the power of pledging stock to this amount.

By a statement made by the Traversers and George Williams to the Parent Board, in the month of March 1819, it appears that they were jointly interested in forty seven thousand three hundred and ninety eight shares, of the United States's Bank Stock, and and that eighteen thousand two hundred and ninety shares, part thereof, had been pledged to the Parent Bank for money borrowed at that Bank; and that rating the said stock at one hundred and twenty five dollars per share, it might be subjected to a further hypothecation, of three hundred and twenty five thousand six hundred and fifty dollars. By the same statement it appears, that the same concern had in the Office at Baltimore, two thousand five hundred and fifty eight shares; which rated at $125 per share, would produce three hundred and nineteen thousand, seven hundred and fifty dollars; and this sum added to the former sum of three hundred twenty five thousand, six hundred and fifty dollars, would give the aggregate sum of six hundred and forty five thousand, four hundred dollars. The remaining twenty six thousand, five hundred and fifty shares, in which the Traversers and George Willi-

ans were jointly interested, were pledged in different amounts, at Boston, New York, London and Liverpool at par; except three thousand five hundred, which were hypothecated at Liverpool at $125 per share. Now it is most obvious, that the Traversers could not make an effective pledge of the shares, thus pledged at Boston, New York, Liverpool and London; because the persons who had loaned money on them, were entitled to the certificates, and had a right to sell under the usual powers of hypothecation: And we shall see in the sequel, that this was the opinion of the Traversers, and that in point of fact, those shares were not pledged for the large sum of money which they drew from the Bank, under the name of Stock Loans. In this enumeration I have not included thirty four shares of stock, belonging to M'Culloh individually, and which were pledged for a discount of three thousand four hundred dollars, which he had obtained as a Stock Loan. From this view it evidently appears, that the Traversers and George Williams could only rightfully obtain on Stock Loans, six hundred and forty five thousand, four hundred dollars, valuing the stock at $125. How much had they received on the 12th of November, 1818, under the pretence of having pledged Stock? The enormous sum of one million five hundred and forty thousand dollars at least, leaving an excess, for which they could not give Stock security, amounting to the sum of eight hundred and ninety four thousand, six hundred dollars.

This amount was then taken by the Traversers, without authority, in defiance of the positive orders of the Parent Board, in violation of their duty as public officers intrusted with the general supervision of the concern of the Bank, and in fraud of the rights of the Stockholders. The next enquiry is this, were those loans which they so profusely dealt out to themselves, without authority, and without the concurrence of the Directors, obtained by false and fraudulent pretences, and artful devices? The Stock Notes discounted by the Traversers, for the benefit of themselves and George Williams, to the amount of one million five hundred and forty thousand dollars, were represented on the Offering Book, as notes discounted on a pledge of Stock, and the nett proceeds were carried to the credit of the parties, and were placed upon the Discount Ledger or Credit Book; which also represented the notes as Stock Notes, and exhibited the dates, the periods of payment, and the names of the drawers and endorsers. But neither the Offering nor the Credit Book noticed the number of shares, on which the discounts were

represented to have been given. Here, then, is the most decisive proof, that the money was taken from the Bank under a false representation, recorded in the Books of the Bank, that the amounts carried to their credit, had been obtained on a pledge of Stock! What language do those entries speak? Why, that Stock had been hypothecated, to the amount of the loans, valuing it at $125 per share; or that an effective and available pledge had been made, in conformity to the instructions of the Parent Board. But this language was false, for the hypothecation had not been made, and the Traversers had not the power of making it—But the artful devices do not end here; for the semi-weekly statement of the affairs of the Branch, made by the Cashier to the Board of Branch Directors, for their government and information, represented the above sum of one million five hundred and forty thousand dollars, together with the other sums really lent on a pledge of stock, to be secured by a Stock hypothecation; and as one of those semi-weekly statements was transmitted to the Parent Board every week, the same representation was of course made to them. And thus by these artful devices, both Boards were grossly deceived, by those whose duty it was to give correct information. And it must be remembered, that by the resolution of the 25th July, this statement ought to exhibit the amount of Stock Loans, distinct from the amount of bills and notes discounted on personal security. It has been urged by the Counsel for the Traversers, that the Offering Book and the Credit Book were open to the inspection of the Directors of the Branch Bank; and that if they chose to look at them, they might have seen the amount of loans obtained by the Traversers. This is most true. But by such an inspection they could not have judged, whether an effective pledge of stock had been made; because although the Books describe the notes as Stock Notes, they do not intimate the number of shares that were hypothecated. They represent, to be sure, that an effective pledge of Stock had been given; but they are silent as to the number of Shares that were pledged: And it is this false representation as respects the pledge, and this studied silence as regards the power of the President and Cashier to make the pledge, that furnish the most conclusive evidence of the fraud. Here, then, we have the two great characteristic badges of fraud: *The suggestion of falsehood and suppression of truth.*

That the Directors of the Office of Discount and Deposit never did sanction the discount of those pretended Stock Notes, is prov-

ed in my judgment beyond all controversy. They were not brought before the Board. The President and Cashier claimed the exclusive right of granting Stock Loans, on the ground that it was executive business, and as such confided solely to them. The period at which this assumption of power on the part of the Traversers commenced, deserves to be considered; as it will furnish strong evidence of their fraudulent design, to use the funds of the institution at their will and pleasure, without being subject to the control of the Branch Directors, and in defiance of the resolutions of the Parent Board. It was proved that until the 12th of August, 1817, stock notes, like other notes, were brought before the Board, for discount: but that on that day a note of Smith & Buchanan, for five hundred and forty thousand dollars, without an endorser, was discounted for them as a stock note: That on the 30th of August 1817, the note of Hollins & M'Blair at ninety days, for two hundred and eighty thousand dollars, endorsed by Smith & Buchanan, was discounted for them, as a stock discount. On the 5th of September, 1817, another large discount to the amount of one hundred and sixty five thousand dollars, was taken by Smith & Buchanan as a stock loan, on a note drawn by George Williams; and in the same month, two other notes, amounting together to eighty six thousand five hundred dollars, were also discounted as stock notes for Smith & Buchanan. I deem it unnecessary to refer to other discounts of pretended stock notes, as those already stated fully develope the motives, which induced Buchanan, in connection with M'Culloh, to claim the exclusive right of granting stock discounts. M'Culloh's stock discount operations did not commence so early. His first stock discount took place on the 5th September, 1817; the second on the 7th of October, in the same year; and the third on the 23rd October; and other stock loans were taken from time to time, to suit his convenience—Hence this unwarrantable assumption of power!!

The Parent Board by its resolution of the 20th October, 1818, requires the Cashiers of the respective Offices, to lay before that Board a statement of the existing discounts upon notes, for the payment of which public or corporate stocks of any kind may have been pledged, together with the list of the notes, the names of the drawers and endorsers, and the amount and description of the stock pledged for the payment of the notes respectively.

On the 26th of October, 1818, M'Culloh writes Jonathan Smith, the Cashier of the Parent Bank, that he has "directed the lists of

discounts granted here (meaning Baltimore) upon the pledge of stock, and personal security, to be made up, and as soon as it can be conveniently furnished, it shall be forwarded to you."

On the 9th of the succeeding November, he says in his letter to the Cashier of the United States Bank, "I am preparing a list of borrowers upon stock at this Office, which you will receive next Tuesday: The delay in furnishing this list correctly, arises from a necessity to examine these loans for some time back, as entries have been some times debited to loans on stock, which should have been to bills on personal security, and vice versa." On the 14th of November, 1818, M'Culloh drafted the following entry, and directed Mr. Rutter a clerk in the Office, to copy it into the day book. "Bills receivable to Loans on Stock Dr. for this sum being amount that had at various times been charged as lent upon the hypothecation of stock at this Office, but which should have been charged to Bills Receivable, as ascertained by making up a list of the loans existing upon stock, hypothecated here and at the Bank of the United States——$852,683 64." Here let me ask why was this entry made? Was it to correct errors that had actually occured? There is no pretence for such a suggestion. The Books of the Bank, which have been carefully examined, show that the discounts on personal security and stock notes, had been correctly recorded—Nay the Traversers have not attempted to prove that the entry was correctly made. Why then was it made? It was *fabricated*, to give a false character to transactions, originating in the wilful and fraudulent violation of duty: It was designed to conceal from the Branch and Mother Boards, the real amount which had been discounted under the pretence of hypothecated stock: it was, in fine, resorted to as a device, by which the Directors of the Parent and Branch Institutions were to be hoodwinked. For it must be remembered, that the effect of this false entry was to diminish, by $852,683 64, the line of stock discounts on the statement book, and to increase to the same amount the line of discounts on bills or notes. Here again the Branch and Parent Boards were deceived, by the representation that nearly $900,000 had been discounted on personal security, when in truth, this sum had been taken under the pretence of hypothecated stock. The resolution of the 20th of October, 1818, also enjoins the Cashiers of the Offices, to require from those who had borrowed, at a rate exceeding the par value of stock, a reduction of twenty five per. cent. of such excess, every sixty days, until such excess shall be extinguished,

or to pledge an additional amount of funded debt or stock of the Bank, at the par value thereof, as shall be equal to the amount of such excess. Yet we find that on the 12th of November, ensuing, the discounts of M'Culloh, Buchanan and Williams on colorable stock notes had been augmented by several thousand dollars.—And notwithstanding this, M'Culloh writes to the Cashier of the Parent Board on the 14th of the same month, that he has "the satisfaction to believe, that whatever has been lent at this Office, is perfectly will secured, and that the reduction in the amount of the stock loans recently required, will be accomplished without any loss to the institution, and most probably within sixty days." The Parent Board, then, order a reduction of loans on stock, really pledged beyond its par value. The President and Cashier of the Office at Baltimore, in the face of this order, increase their discounts, on the false pretence of having pledged stock; and two days afterwards the Cashier of the Branch informs the Cashier of the Parent Board, that the order of the latter will be complied with!!

Again: M'Culloh on the 14th January, 1819, discounts eleven thousand dollars on his note endorsed by Smith & Buchanan, which is represented on the book as a stock note, and on the same day he discounts twenty thousand dollars on his note endorsed by the same persons; and this too is represented to be a stock note. And it must be borne in mind, that the former of those two discounts, constitutes no part of the one million five hundred and forty thousand dollars. Further: the Parent Board, by its resolution of the 22d January 1819, declares, that "no discount shall be made or renewal on stock or any other discount, or in substitution of a note or hypothecation made or renewed at this Bank, or any of its Offices of Discount and Deposit, without each discount or renewal being first presented to the Board of Directors of this Bank or its Offices, as the case may be, and approved by the Board of Directors, agreeably to the bye-law." And by a resolution of February 1st, in the same year, the Parent Board declare "that no new loans shall be made on stock of any kind, at this Bank or any of its Offices." But we find that Buchanan in defiance of those imperative orders, on the third day of March 1819, discounts as a stock loan, a note drawn by George Williams, in favor of Smith & Buchanan, for twenty thousand dollars. This note was a renewal of one which had been previously discounted on personal security. This renewed note was not brought before the Board of Directors, "to be

approved or rejected by them," but after passing through the crucible of false representation, it was changed into a stock note, and produced the desired effect. This discount, too, was entirely unconnected with the great loan of one million five hundred and forty thousand dollars. Can cases of more palpable and gross fraud be presented to the human mind ?

The resolution of the Parent Board of the 19th February 1819, required the Cashier of the Office of Discount and Deposit at the City of Baltimore, to transmit to the Parent Board, "a list of all the notes then discounted at that office, with the names of payer and endorser on each note, designating in the list, all notes which were discounted with an hypothecation of Stock, for securing the payment of such notes, and also designating the kind of Stock, and the rate at which it had been hypothecated, together with a copy of the Instruments of writing by which the hypothecation had been made." In obedience to this Resolution the Cashier, in the beginning of March, prepared a Stock list and Pay list, which were soon afterwards laid before the Parent Board. By the term pay list, was meant the list of notes discounted on personal security alone. By the stock list James M'Culloh was represented as a borrower to the amount of three thousand four hundred dollars only, on thirty four shares, which he owned in his individual right. Smith & Buchanan were represented as having borrowed on their two notes, endorsed by George Williams, and secured by a pledge of stock, two hundred and thirty five thousand, three hundred and seventy five dollars; and George Williams was therein stated to have borrowed four hundred and ten thousand and twenty five dollars, on two notes ; one drawn by George Williams and endorsed by A. A. Williams for two hundred and twenty one thousand eight hundred and twenty five dollars, and the other drawn by George Williams and endorsed by Smith & Buchanan, for one hundred and eighty eight thousand one hundred and fifty dollars. The whole amount secured by a pledge of stock. It cannot but be remarked, that the loans thus represented to have been made to Smith & Buchanan and George Williams amount to the sum of six hundred and forty five thousand four hundred dollars ; being the precise amount which they and M'Culloh could borrow on their Bank Stock, valued at one hundred and twenty five dollars per share.

And a most singular feature in this fabricated list is, that all the stock notes therein mentioned, except the note of ninety seven

thousand eight hundred and seventy five dollars are fictitious. As one million five hundred and forty thousand dollars had been drawn from the Office, under the color of stock notes, discounted for Smith and Buchanan, M'Culloh and Williams; and as the stock list laid before the Parent Board, only shewed six hundred and forty seven thousand four hundred dollars, to have been borrowed on the hypothecation of stock; it became necessary to carry the difference between those two sums, to wit. the sum of eight hundred and ninety four thousand six hundred dollars, to the pay list: and by this list three notes, amounting to that sum, are represented as having been discounted by the Directors of the Office, on personal security, when in fact no such notes were ever brought before them. Two of them were fictitious, and the other amounting to three hundred and twenty five thousand dollars, had been discounted by the Traversers for Smith and Buchanan, as a stock note, and constituted part of the stock debt of one million five hundred and forty thousand dollars. In a word, by this singular and fraudulent process of fabrication, used for the purpose of concealing the malversations in office of the President and Cashier, the stock Loans of Smith and Buchanan, M'Culloh and George Williams are represented as amounting only to the sum of $645,400; which sum could have been secured by an effective pledge of stock at $125 the share: but as $1,540,000 had been taken from the Bank under the false representation that stock had been pledged, the difference amounting to the sum of $894,600 is represented by the pay list, as having been discounted on three notes by the board of Directors; every syllable of which is untrue: for one of the notes, to wit. that of $325,000, was a stock note on which part of the great sum of $1,540,000 had been obtained; and the other two were fictitious, and the amounts assumed for the purpose of ekeing out the sum of $894,600. And in addition to all this, M'Culloh's stock discounts are presented by the stock list, as amounting only to the sum of $3,400; although his proportion of the $1,540,000 amounted to the sum of $574,001 01. It has been proved that Smith and Buchanan, M'Culloh and George Williams stopped payment in the month of May 1819; that they are insolvent; and that a large amount of their discounts, on stock notes, has been entirely lost to the United States Bank.

On all the proof, I am satisfied, that the offence charged by the indictment has been fully established. A large sum of money has been taken from the funds of the Bank by the Traversers, under

false representations, and in violation of a sacred trust: and to conceal the fraud, the records of the Bank have been falsified, and the Directors deceived by false statements, made for the express purpose of deceiving. Why did the Traversers resort to the fraudulent misrepresentations, and the false pretences which have been detailed in testimony, if their motives were pure? How has it happened that almost every step in their stock discounts has been emphatically marked with the suggestion of falsehood and the suppression of truth: why were those peculations on the Bank continued to a period, when all expecttaion of reimbursement was hopeless? In the months of January and March 1819, when an amount of $31,000 was taken on the pretence of stock loans, in addition to the $1,540,000, the affairs of Smith and Buchanan, George Williams and M'Culloh were desperate; as has been proved by the depression of Bank Stock, and their subsequent insolvency: under all these circumstances, I do not feel myself at liberty to say, that the Defendants did not confederate to embezzle the funds of the United States Bank. The highest Law Tribunal in Maryland has decided, that a conspiracy to defraud is an indictable offence. If the facts proved in this cause, do not establish a confederacy to defraud, the title of conspiracy may be expunged from the penal code; as the offencecannot be proved in any case, except where the parties charged had promulgated their design to commit the fraud.

It has been urged on the part of the defence, that there is no proof that the Traversers did not intend to pay the principal and interest. Have they paid it? If they had the power of paying it and did not pay it, the circumstances under which the money was fraudulently taken from the Bank, furnish the most irresistible proof that they did not mean to pay. If they fraudulently embezzled the money, when they knew that they could not return it, it would be a waste of time to talk about their intention of repaying. And in a case like this, where the whole transaction which is the subject of the resent prosecution, was concocted in fraud, concealed by a tissue of false entries, deceitful representations and artful devices, and terminated in loss to the parties defrauded, how can it be inferred, that the Traversers were actuated by honest intentions, and meant to do that which they have not done?

On the part of the Traversers it was urged, that Dennis A. Smith, at the time he suspended his payments was indebted to the Mechanics' Bank between $800,000 and $900,000: That the Mechanics' Bank then owed to the Office of Discount and Deposit a-

bout $800,000; and that the great stock purchases made by Smith and Buchanan, M'Culloh and George Williams of Dennis A. Smith (and which occasioned their insolvency) originated partly in the generous design, of securing the debt due from the Mechanics' Bank to the Office; as the proceeds of the sale enabled Dennis A. Smith to discharge his debt to the Mechanics' Bank, and by this operation, the Mechanics' Bank had it in their power to liquidate the balance against them with the Office. As this statement has not been proved, it is unnecessary to enquire what would have been its effect, if it had been proved. On the 24th April 1817, a secret committee, consisting of members from each Board, conferred on the subject of the debt due from the Mechanics' Bank to the Office; and it was then agreed that the Mechanics' Bank should pay over to the office $250,000, in bills receivable, (which had been assigned to it by Dennis A. Smith,) together with the notes of Col. Mosher (he then being President of the Mechanics' Bank) for about three hundred thousand dollars; and that the balance, which did not exceed the usual accommodation given to the City Banks by the Office, should remain on interest. Dennis A. Smith previous to this arrangement had assigned to the Mechanics' Bank $150,000 in bills, in addition to the $250,000 which were passed to the Office; and it was proved that the negociable bills thus assigned by Smith to the Mechanics' Bank, were bottomed on the sale of Merchandize, and have no connexion with any stock speculation. Whether the first sale of stock by Dennis A Smith to Smith and Buchanan, M'Culloh and George Williams was anterior to this arrangement, does not appear. The second sale was made in June, and the third in December 1817. On the 25th April 1817, the day after the conference of the committee, James A. Buchanan, the President of the Office informs William Jones Esquire, the President of the United States Bank, by letter, of the arrangement that had been made the preceeding evening with the Mechanics' Bank; and observes that "a full, free and unreserved interchange of opinion took place, the result of which is a satisfactory conviction to our minds, that the Mechanics' Bank can sustain no loss from Mr. Smith. The Committee from that Bank will continue to give unremitted attention to its concerns, and we entertain no apprehension for its safety." And on the 23d of June 1817, M'Culloh informs the Cashier of the United States Bank, that "the Mechanics' Bank had made an arrangement to pay its debt to this Office, by a sale of sterling and six per cents at Boston;" and on the 31st of October 1817,

Buchanan writes the President of the United States Bank, that the "Mechanics Bank is of unimpaired credit, and we have reduced the very heavy debt due to us, to almost nothing." The notion therefore that the immense purchases of stock from Dennis A. Smith, were made with the view of securing the debt due from the Mechanics' Bank to the Office of Discount and Deposit, is unfounded. Can it be believed that those persons would engage in such extensive and adventurous speculations, amounting to millions, with the generous motive of paying a debt due to the Office of Discount and Deposit? If this was their design, why not avow it? Why resort to all those fraudulent devices, which have been detailed in testimony, if their object was so noble, so disinterested? The pretence set up by the Traversers, that the Committee on the part of the Office sanctioned those speculations, with a view to benefit the Office, has been disproved. For these reasons and others, I am of opinion that the Traversers are guilty.

JUDGE HANSON then delivered a written opinion, as that of himself and Judge Ward, in which he supported at length the decision which they had pronounced. As this opinion was not taken down fully at the time, and Judge Hanson has not deemed it proper to furnish a copy for insertion in this report, it cannot be given at length. He was understood to state in substance; "That the Traversers were charged by the indictment, with having taken this money fraudulently, with intent to keep and use it two months, without paying interest: That this intent therefore was a material part of the charge, and must be proved: That as they had charged themselves with the loans, in the books of the Bank, at the time when they were taken, and had then a prospect of being able to repay principal and interest, it appeared that they did then intend to repay principal and interest; at least there was nothing to prove the contrary, which must be proved: That their subsequent disappointment, by the failure of their speculation, and their consequent ruin, could not convert that into a crime, which was not one at the time of doing it: and that the measures to which they afterwards resorted, for the purpose of concealment, could make no difference in the case; since the act was to be judged of by the views and intentions with which it was done, and not by any thing which subsequently took place."

He concluded with declaring it again to be the opinion of the court, that the Traversers were not guilty in law or in fact, and that a judgement of acquittal must be entered: which was accordingly done.

George Williams, who was included in the same indictment, but had not been put on his trial with the other two Traversers, because he was absent through sickness when the trial commenced, then appeared, plead not guilty, and put himself upon the court for trial. He was acquitted as a matter of course; because one person alone cannot be guilty of conspiracy: and as the other two were acquitted, he alone remained under the indictment. Justice to him requires it to be stated, that he did not appear from any part of the evidence, to have had any actual agency in the transactions with which his name was connected, or any knowledge at the time of the very reprehensible means employed in carrying them on. Indeed there was proof, that when the practice of discounting notes, without submitting them to the Directors, came to his knowledge, he expressed strong disapprobation of it, and declared it to have been done contrary to his intentions and wishes. The counsel for the prosecution took occasion to declare, that his case had been viewed by them from the first, in a much more favourable light than that of the other Traversers, and that they had always understood and believed that he had lost a very ample fortune by these most reprehensible speculations, in which they regarded him as a dupe rather than an accomplice. It is therefore highly probable, that had he been put on his trial, he would have been acquitted on the merits of the case.

SECOND INDICTMENT.

THE case of the stock notes being concluded, the next indictment was called. It was against James A. Buchanan and James W. M'Culloh alone; and contained a special and a general count. The first charged, in substance, that on the 31st of January 1819 these two persons, one of them being President and the other Cashier of the Office Discount and Deposit of the Bank of the United States at Baltimore, fraudulently conspired and combined together, by wrongful and indirect means, to cheat and injure the Bank; for which purpose James W. M'Culloh fraudulently and secretly delivered to James A. Buchanan, and he fraudulently and secretly received, certain bills of exchange to the amount of £6,080 sterling, or $27,022 22 the property of the Bank, which M'Culloh as Cashier of the Baltimore Branch had received in payment of a debt, due to it from the Farmers and Mechanics' Bank of Georgetown, and then held in his capacity of Cashier.

These bills of Exchange were charged by the indictment, to have been thus delivered by M'Culloh, and received by Buchanan, with intent to enjoy the benefit and use of them four months, without the consent or knowledge of the President and Directors of the Bank of the United States, or of the Baltimore Branch; and *without giving any security for the repayment of their value.*

The first count further alleged, that M'Culloh in pursuance of this conspiracy, and for its more effectual perpetration and concealment, did with the knowledge privity and consent of Buchanan, cause false and fraudulent allegations representations and statements to be made, and laid before the Directors of the Baltimore *Branch; in which the Farmers' and* Mechanics' Bank of George Town was designedly represented as still owing the debt for which these Bills of Exchange had been sent to him in payment; and did also with the knowledge privity and consent of Buchanan, cause and procure that no entry of the receipt of these Bills of Exchange, or their delivery to Buchanan, should be made in the Books of the Branch Bank, nor any credit given for them to the Bank at Georgetown.

The second count charged them with a conspiracy, by wrongful and indirect means, to cheat defraud and injure the Bank of the United States, by getting into their possession and embezzling its property to the amount of $50,000 in money or Bank notes, by means of fraudulent and unlawful devices.

The parties appeared and plead not guilty to this indictment, and put themselves upon the court for trial, as in the preceeding case. To save time and trouble it was agreed, by the Attorney General and the counsel for the Traversers, that all the testimony adduced in the former case, should be considered as in evidence in this, so far as it might be thought applicable by either party. The Attorney General then proceeded to open the indictment, and produce additional testimony under the first count.

He first gave in evidence two letters from James W. M'Culloh, in his official character as Cashier of the Baltimore Branch Bank, to Clement Smith, Cashier of the Farmers' and Mechanics' Bank of Georgetown; one of which bore date on the 18th of November, 1818, and the other was without date, but had the post mark of November 20th. These letters were admitted to be in the handwriting of M'Culloh, and under his signature.

He also produced and read in evidence copies of the answers of Clement Smith to these letters, which had been admitted in evidence by the Traversers, before the trials commenced, to save Mr. Smith the trouble of attending in person to prove them. The letters and answers are as follows.

"*Office of Discount and Deposit, Baltimore, 18th Nov.* 1818.

DEAR SIR,

It is stated to me that you are indebted to this Office about $30,000, after giving credit for collections to be made for you here in all this month.

When I last had the pleasure to see you here, you proposed placing me in funds by sterling bills to be sold for you here, but I have not since had the pleasure to hear from you on this subject.

It will, my dear sir, be indispensably necessary for you to face your drafts on me in future before they appear. To meet them, even then, will often place me in a very unpleasant attitude with my neighbours, for as coin is uniformly required by the holders of your checks, I shall have in turn to call for it of Banks that owe me. A continuance of this intercourse cannot I apprehend be of any real advantage to you, and must often place me in an unplea-

sant situation with my neighbours. An understanding might I imagine be had by you with some state banks without subjecting them to the same calls for coin by the holders of your checks, on them you might check payable in current notes perhaps

I wish you to take measures to place me in funds for the present debt with as little delay as possible.

Truly Your's,

J. W. M'CULLOH, *Cashier.*

CEMENT SMITH, Esq. Cashier Farmers' and Mechanics' Bank of Georgetown, District Columbia."

"*Farmers' and Mechanics' Bank of Georgetown, Nov.* 19, 1818.

DEAR SIR,

Your esteemed favour of the 18th inst. is received—enclosed I hand as per statement below £6080 sterling, which I should be glad to have placed to my credit if it can be done at par. If that cannot at this time be done, I should prefer to hold them for a few days, under a hope of an improvement in price. I however only ask this on condition of your *perfect convenience.* I also enclose in the notes of the Branch here, $15,000 with which I must beg you to credit my account; about $25,000 of my debt to you has grown out of operations for the use of that Office. I had also promised to pay for them in Baltimore, the further sum of from 5 to $6000, if it should be necessary, I must beg the favour of you to advance that amount in any of the notes of Baltimore to Mr. Mackall, and charge it to my account. I had hoped from the manner in which my checks were drawn, that they would not have proved so unfriendly to you.

Most duly, dear sir,

Your friend and ob't servant,

C. SMITH, *Cashier.*

J. W. M'CULLOH, Esq. *Cashier.*

Bills of Exchange drawn by W. Smith on W. & J. Huffman, London.

No. 71	700
72	800
74	1050
76	1200
77	1250
	——£5000

Brown & Kurts on W. Murdock, London, No. 18		900
Frs. Lowndes	90	180
J. Lowndes	90	
		£6080

STATE *vs.* BUCHANAN AND M'CULLOH.

It is agreed that the within shall be received in evidence in the above case as a letter written by Clement Smith, Cashier of the Farmers' and Mechanics' Bank of Georgetown, to James W. M'Culloh Cashier, of the Office of Discount and Deposit of the Bank of the United States, established at the City of Baltimore, which letter was received by said M'Culloh, soon after it bears date.

WM. H. WINDER, Attorney for Traversers.

THOS. B. DORSEY, Attorney General of the State of Maryland.

"MY DEAR SIR,

I have received your letter by Mr. Mackall, and after passing the 15,000 Washington Branch notes to your credit, have sent them by him down to Richard.

This is an operation that I cannot repeat. If he borrows of you, he must pay you, and at home. If his own resources are not, under present regulations, adequate to all the calls made upon him, the sooner he writes unreservedly to Jonathan Smith on the subject of a change and aid, the better.

I gave Mr. Macall $4000 as you requested and charged you therewith.

There is no probability of sterling bills improving, on the contrary they must continue to decline. They are not really worth more than 95 cents now, although they are selling at 98 cents.—I will keep yours until Tuesday and then offer them for sale unless by return mail you request me not to do so.

Things will grow worse every day, unless the national government can apply some remedy.

Present efforts to linger out a miserable experiment are worse than useless, to many they are destruction.

Truly Your's,

J. W. M'CULLOH, *Cashier.*

CLEMENT SMITH, Esq. Cashier Farmers' and Mechanics' Bank, of Georgetown."

"*Farmers' and Mechanics' Bank of Georgetown, Nov.* 21, 1818.

My Dear Sir,

I have received your letter of the —— post mark 20th inst. Your account has credit for the $40 0 which you were so good as to advance Mr. Mackall for me. With regard to the exchange, I leave it entirely to yourself, I know you will do the best you can with them and, I shall be content—they are quoted I understand at New York at 99 to 99½.

Very truly and sincerely
Your ob't servant,
C. SMITH, *Cashier.*

J. W. M'Culloh, *Cashier.*"

State vs. Buchanan and M'Culloh.

The same admission made as to this letter as of the letter of the 19th November, 1818.

WM. H. WINDER, Attorney for Traversers.
THOS. B. DORSEY, Attorney General of the State of Maryland.

He also produced and proved a letter from James W. M'Culloh to Clement Smith, bearing date on the 3rd of December, 1818, from which he read the following extract, the other parts of the letter not having any connexion with this subject. "I have not received any account of sales of your sterling which I sent to New York for sale, but as it will probably be put off in New York or Philadelphia, in a few days at the current rates, you are at liberty to consider me as in funds for its probable proceeds."

John White the present Cashier of the Branch Bank at Baltimore, was then called, sworn and examined on the part of the state. He proved that after he came into office as Cashier, on the 20th of May, 1819, careful and diligent search had been made in the Branch Bank at Baltimore by his orders, for the letters from Clement Smith in relation to the transmission of the Bills of Exchange, but no such letters nor any trace or memorandum of them could be found. The letter book of the Branch Bank of that period, was then produced proved and inspected. It was found to contain no copy nor memorandum of M'Culloh's letters of November 18th and 20th 1818, to Clement Smith; and Mr. White proved that no trace or memorandum of them was found in the Bank at any time after he came into office.

He also produced and proved from the letter book of the Baltimore Branch, the copy of a letter from him to Clement Smith, bearing date on the 10th of June, 1819, which was given in evidence by the Attorney General without objection, and is as follows.

(COPY.)

"*Office Bank United States, Baltimore, June 10th*, 1819.

C. SMITH, ESQ. CASHIER,

SIR,

I am favoured with your letter of the 8th inst. The Farmers' and Mechanics' Bank of Georgetown appears upon the books of this Office to be indebted $27,037 42 to this institution.

Examination has been made amongst your letters, about the period you mention, and we can only find one of the 28th November, which makes allusions to Bills of Exchange, and that in a very distant manner.

I cannot find any record on the books of this Office of a sale having been made of the £6080 sterling upon your account.

I am very respectfully,

Your obedient servant,

(Signed) JOHN WHITE, *Cashier.*"

He then proved, that in consequence of the receipt of this letter, Mr. Smith had transmitted to him McCulloh's letters of November 18th and 20th, 1818, and the copies of his answers, dated November 19th and 21st, 1818; all which had already been given in evidence.

The books of account of the Baltimore Branch of the same period were next produced proved and examined, and were found to contain no entry memorandum or notice of any kind, in relation to the Bills of Exchange mentioned in the letter from Clement Smith of November 19th, 1818, or any of them.

Mr. White also proved, that after he came into office, and he thinks about the 5th of June, 1819, enquiry being made of James W. McCulloh for information, on the subject of the balance appearing to be due, from the Farmers and Mechanics Bank of Georgetown, McCulloch mentioned the receipt of the Bills of Exchange in question, and stated that he had sold them to S. Smith & Buchanan, who had not paid for them; that he then calculated the amount of the Bills, at one half per cent below par, and added

the interest from December 12th, 1818, to August 7th, 1819, making a total for principal and interest of $27,953 62, for which sum he obtained the note of S. Smith & Buchanan at 60 days, bearing date on the 5th of June, 1819 : and that he presented this note to the committee, and required that its amount should be passed to the credit of the Georgetown Bank.

William Gill, a Clerk of the Branch Bank at the period in question, and charged with the care of the letters and letter book, was then sworn and examined. He proved that by order of Mr. White, the Cashier, soon after that gentleman came into office, he made diligent search in the bank for those letters from Clement Smith, but could not find them, and reported this result to Mr. White.— The counsel for the Traversers then produced the original letters, which were read in evidence, and found to agree substantially, though not literally, with the copies already before the court. Having been delivered back to the Traversers they cannot be inserted.

Mr. Gill, the witness, was further examined in relation to the endorsements on these original letters. He proved that it was his business, at the time when they bore date, to endorse and file letters; which duty in case of his absense, was performed by some other Clerk ; and that the words "C. Smith," written on the backs of these two letters, were in the hand writing of James W. M'Culloh.

The next witness was Alex. Brown. He proved that some time in the latter part of the year 1816, Dennis A. Smith, of Baltimore, had obtained from the house of Wm. & James Brown, of Liverpool, of which the witness was the correspondent and agent, a loan to the amount of £40,000 sterling, on a pledge of 1,500 Shares of the Stock of the Bank of the United States: That Mr. Smith afterwards assigned these Shares, subject to the hypothecation, to the house of S. Smith & Buchanan, who assumed the debt: That this loan having been made for two years, the time expired in the latter part of the year 1818; when the witness by order of the lenders in Liverpool, called on S. Smith & Buchanan for the payment or reduction of the debt; and stated to them that if they paid £10,000 sterling on account, which would reduce it within the limits of the security as it then stood, he could give them further time for paying the rest. That James A. Buchanan, with whom his communications on the subject had taken place, agreed to this proposition; *and accordingly on the 12th of December, 1818, enclosed to* him in a letter nine Bills of Exchange on London, to the amount of

£10,000 sterling, eight of which, amounting to £6080 sterling, were of the precise description in all respects, of those mentioned in the letter of November 19th 1818, from Clement Smith to James W. M'Culloh; and the other was a bill of S. Smith & Buchanan themselves, for £3920 sterling, so as to make up the £10,000: and that he received these Bills from Buchanan for the Liverpool house, in part payment of the debt due to it, on the pledge of Stock already mentioned.

Mr. Brown then produced and proved the letter of Buchanan enclosing these Bills of Exchange, and one set of the Bills themselves.

The Attorney General was then about to offer evidence, that the debt to the house of W. & J. Brown, of Liverpool, in payment of which these Bills of Exchange had been delivered to Alexander Brown, was the joint debt of S. Smith & Buchanan, James W. M'Culloh and George Williams; who before the payment, had become the owners of the Stock hypothecated for its security: but the fact was admitted on the part of the Traversers.

Here the evidence for the State closed, under the special count in the indictment; and the Attorney General proceeded under the general count to give evidence of the overdrawings of James A. Buchanan, in the name of S. Smith & Buchanan, and that they were expressly permitted and concealed by James W. M'Culloh.*

The first testimony adduced for this purpose, was a statement of the daily balances appearing on the books of the Branch Bank at Baltimore, in the account of S. Smith & Buchanan, from the 19th of January 1819, to the 20th of May in the same year, both days included. This list was made out from the books by Peregrine Janvier, one of the book-keepers of the Baltimore Branch, who was sworn as a witness and proved its correctness; in further support of which, the books themselves were produced and referred to. The statement is as follows:

* All this testimony was produced in the former case but afterwards withdrawn from that, and applied to this; under the agreement which has already been stated.

1819		Over In Bank	1819		Over In Bank
Jan.	19	$23,332 70		28	13,969 92
	20	24,082 70	Mar.	1	15,826 25
	21	24,293 95		2	21,526 31
	22	24,293 95		3	37,972 57
	23	21,968 66		4	4368 79
	24	21,968 66		5	4468 79
	25	15,359 13		6	9199 12
	26	7376 76		7	9199 12
	27	7763 57		8	9399 12
	28	8246 34		9	11,184 78
	29	8246 34		10	11,184 78
	30	3788 84		11	11,184 78
	31	3788 84		12	11,790 41
Feb.	1	6903 42		13	11,501 95
	2	7134 42		14	11,501 95
	3	7234 42		15	13,116 61
	4	8857 76		16	15,430 38
	5	8357 76		17	14,951 31
	6	8357 76		18	14,951 31
	7	8357 76		19	16,264 53
	8	8428 76		20	17,015 78
	9	8628 76		21	17,015 78
	10	8628 76		22	17,015 78
	11	8765 57		23	17,083 33
	12	8817 57		24	17,083 33
	13	8917 57		25	17,083 33
	14	8917 57		26	3262 70
	15	12,364 73		27	3454 90
	16	12,517 76		28	3454 90
	17	12,979 26		29	3604 90
	18	14,479 26		30	3604 90
	19	11,861 48		31	5507 49
	20	12,279 50	Apl.	1	14,189 09
	21	12,279 50		2	14,189 09
	22	12,279 50		3	14,289 09
	23	12,379 50		4	14,289 09
	24	12,379 50		5	14,289 09
	25	13,446 17		6	1879 25
	26	7408 55		7	920 75
	27	13,969 92		8	992 41

1819	Over	In Bank	1819	Over	In Bank
Apl. 9		8241 34	April 30	24,001 12	
10	11,287 77		May 1	24,185 21	
11	11,287 77		2	24,185 21	
12	12,237 68		3	24,285 21	
13	14,546 45		4	30,902 54	
14	14,546 45		5	34,327 54	
15	14,602 45		6	34,327 54	
16	17,987 86		7	35,050	
17	19,487 86		8	35,050	
18	19,487 86		9	35,050	
19	19,587 86		10	35,423 33	
20	16,787 86		11	35,423 33	
21	17,127 86		12	35,423 33	
22	17,599 86		13	36,721 38	
23	20,289 86		14	36,774 38	
24	20,813 96		15	36,774 38	
25	20,813 96		16	36,774 38	
26	21,880 63		17	36,774 38	
27	21,496 12		18	38,165 36	
28	21,596 12		19	39,916 24	
29	23,841 12		20	39,916 24	

The Attorney General here called the attention of the Court to the 17th Article of the rules and regulations of the Parent Bank, for the Government of the Branches, which prescribes the duties of the Cashier and other officers, in relation to overdrawings; *(a)* and also the 22d Article, which prescribes the oath to be taken by the Presidents and Cashiers of the Branches. *(b)* He then proceeded to examine P. Janvier further, on the part of the State.

He proved, that during the whole period from January 19th to May 20, 1819, both days inclusive, he was one of the Book-keepers of the Baltimore Branch, and had charge of the account of S. Smith & Buchanan: That it was part of his duty to give notice to the Cashier of all overdrawings, which he had no doubt that he did, although he could not remember all the particular instances: That he either always informed the Cashier of overdrafts, or understood that he was informed of them in some other manner: That sometimes he mentioned them to the First Teller: That for about a month before the 20th of May 1819, he regularly furnished Mr. McCulloh

(a) See page 24. *(b)* See page 140

the Cashier, before each of the statement days, which were twice a week, with lists of all the overdrafts of any considerable amount; but before that period had only mentioned to him occasionally such of them as were of considerable amount, as $10,000. That he is confident that he never omitted to mention to Mr. M'Culloh any overdraft, which amounted to $20,000: That when he thus mentioned overdrafts, Mr. M'Culloh generally directed him to inform the parties of them by note; and in one instance such a notification was given to S. Smith & Buchanan, when Mr. Buchanan called and explained it: That where notice was thus given to the parties, it was the practice for them to call and make deposits to cover the overdrafts, or to make explanations to the Cashier: And that Mr. M'Culloh sometimes directed him (not in reference particularly to S. Smith & Buchanan) to let overdrafts stand, on account of Bills of Exchange or promissory notes put in for collection; and perhaps sometimes for other reasons.

John White and James Beatty, who were Directors of the Baltimore Branch on the 20th of May, 1819, and for a considerable time before, were then called and examined on this point. They both proved that no information had ever, to their knowledge or belief, been given by the Traverser M'Culloh, to the Branch Board, of any overdrafts by S. Smith & Buchanan.

The next witness was Roswell L. Colt, also a Director of the Branch on the 20th of May 1819. He proved that on that day, M'Culloh, after his removal was made known to him, stated to the Branch Board that "he took pleasure in declaring to the Board that the Clerks were all intelligent and clever, and that a better set of Clerks could not be found; that some accounts would appear to have been overdrawn, which was done by his permission and by his orders; that the Clerks were not to blame, and he assumed the whole responsibility."

James Cox the Cashier of the Bank of Baltimore, which office he had filled for many years, was also called and examined for the prosecution. He proved, that it was a standing order of the Bank of Baltimore to permit no one to overdraw; but that to a certain extent it was often done in the course of business, and sometimes could hardly be avoided. That to a proper extent it was often beneficial to the Bank: That the cases where it was permitted, and was useful, were cases of good customers, in whom confidence might safely be placed, and who might have good notes or acceptances in the Bank for collection and very near falling due. In

such cases, if they wanted some money immediately, which though not actually in Bank would certainly be there in a short time, it was thought a reasonable indulgence to let them overdraw to a moderate amount; which was not only very useful to them, but was also advantageous to the Bank, by its tendency to invite and retain good customers. To determine when such a case existed was a matter of sound discretion and great responsibility in the Cashier, but in no case should he think it safe or proper, to let any customer, of whatever character, be overdrawn for any considerable time.

James L. Hawkins the Cashier of the Franklin Bank of Baltimore, was also called and examined on the same subject. He proved that it is a standing order in the Franklin Bank not to permit overdrafts; but they are sometimes permitted by the President or Cashier, under particular circumstances, and orders are in that case given by him to the book-keeper. This was done in such cases as the deposit of good bills for collection on Boston, New York or Philadelphia, which had been accepted and were near maturity, but could not be carried to the credit of the depositor, till advice of their actual payment was received: Or where a note, known to be good, had been put in for discount in the interval between two discount days; but the proceeds could not be carried to the credit of the person who had put it in, till it had been regularly approved by the board; and sometimes it would happen that a deposit sufficient to cover the checks of a certain day, was made late in the day, after the hour of settling the books; in which case the depositor would appear in the account of that day to be over; but the next day he would receive credit for the deposit, and then his account would stand correct. It was only in cases of this description, Mr. Hawkins said, that he thought himself at liberty to permit overdrafts; which, however might sometimes be made and permitted through inadvertance, and might continue a short time unobserved.

John Hoffman was then called and examined on the part of the State. He stated, that he was a Director of the Baltimore Branch on the 20th of May, 1819, when James W. M'Culloh was notified of his dismissal from office; on which occasion he spoke highly of the clerks, and acquitted them of all blame: and that the Board directed a letter to be written on that subject, to the Parent Board.

The Attorney General then referred the court to the statement already in evidence, of the securities lodged by M'Culloh, to cover

some overdrafts; and among the rest some of S. Smith & Buchanan's, which he had taken on himself, to the amount of $9326 46. (a) And here he closed the evidence on the part of the state.

General Winder for the Traversers then opened the defence.

As to the Bills of Exchange transmitted by Clement Smith to M'Culloh, it rested chiefly on this ground: That the indictment charged them to be the property of the Bank of the United States; but it appeared from the letters given in evidence, that they continued to be the property of the Farmers' and Mechanics' Bank of Georgetown, whose Cashier, Clement Smith, had placed them in the hands of M'Culloh as his agent, to be sold for the use and benefit of the Georgetown Bank, with a power merely to apply the proceeds when received to the payment of their debt; which he contended, produced no change of property, until a sale should take place, or the Branch Bank should accept the bills in payment on the terms prescribed in Smith's letter, which had been declined.

He further stated that the bills had been sent to New York by M'Culloh for sale, but without success; and that when they were returned to him he was sick, and James A. Buchanan offered to purchased them: this offer he accepted; and before he recovered the pressure of their affairs put the whole subject out of their recollection. He then proceeded to adduce the evidence in support of this defence.

The first part of it was a letter of November 24th, 1818, from Clement Smith to James W. M'Culloh; with the answer of M'Culloh, bearing date on the 26th of the same month. These letters are as follows:

(Copy to J. W. M'Culloh, Cashier.)

"*Georgetown, Nov. 24th*, 1818.

My Dear Sir,

I shall probably have a payment to make into the Branch Bank here in a few days of 18 to $20,000, which I should do by sale of Bills of Exchange, but if it would at all be useful to you, I should prefer to place the Exchange in your hands, to be sold *when and where* you prefer, and check on you through the *Office* here. I make this proposition to place you in *Baltimore* funds for the $15,000 of the Branch paper which you obligingly received from

(a) See page 142.

me some days past, and which I fear was inconvenient to you—If convenient let me hear from you per return of mail.

(Signed) C. SMITH, *Cashier.*

J. W. M'CULLOH, Esq. CASHIER."

" *Office of Discount and Deposit, Baltimore, Nov.* 26, 1818.

DEAR SIR,

☞ If you send me your sterling, I can get 2 per. disc't adding int'st, payable in 30 days, A. Brown & Sons' note; please tell me by return mail if I shall have them to dispose of thus, that I may inform Messrs. Browns. The note is first rate.

First rate sterling was sold this day at three per. cent. discount cash. It is quoted from New York 2½ to 3 discount.

I have sent your's (£6080) to New York for sale by an agent who went yesterday—I offered them here at 2 but could not get it.

Nothing can prevent a further decline in Bills, whilst our Banks pay coin.

Dollars are quoted to me at Boston at 9 to 10 premium.

☞ If you determine to apply your sterling to pay by selling for cash here, I will get the most I can for you if you send them to me. In paying the Office at W——— most probably it will be most desirable to it to be paid at W——— as it cannot draw for commercial purposes on other Offices—however if it chooses to remit me the proceeds of your Bills, I can have no objection to its doing so, but I have no wish on the subject nor do I need it.

Truly your's,

(Signed) J. W. M'CULLOH, *Cashier.*

CLEMENT SMITH, Esq. CASHIER,

Richard W. Gill was then called and examined on the part of the Traversers. He proved that sometime in the latter part of November 1818, he went to New York, to transact some business for the Traverser M'Culloh; and at his request took with him certain Bills of Exchange for sale, to the amonnt of £6080 sterling, and answering the description of those transmitted by Clement Smith to M'Culloh: That his instructions from M'Culloh were to sell the Bills, invest their proceeds in specie, and bring it back with him to Baltimore: That on his arrival at New York he placed these Bills in the hands of a broker for sale, and left them there about a week, at the end of which time, finding that he could not

sell them, he returned them to M'Culloh by mail, in pursuance of his orders: That he returned to Baltimore, about the 11th or 12th of December, 1818, when he found M'Culloh confined by sickness to his chamber (so unwell that he held no conversation on business with him) where he continued for some time: That the price of the Bills was limited at New York, by M'Culloh to 97 or 98 per. cent. or some other small amount below par: and that the Bills, were unsaleable in New York, not on account of the limitation of price, but because they were not endorsed by a New York house of credit, or some house known there: That sterling Bills were then represented to him as being abundant in the New York market, which might also have operated against the sale of them.

In relation to the overdrawings, General Winder insisted, that as the second count on which alone they could be given in evidence, charged the conspiracy to be, to get the money of the Bank "with intent to keep and use it two months without paying interest," they fell within the principle on which the preceeding case had been decided.

He also observed that some of these overdrawings had occurred by accident; credits not having been given on the days when deposits were made, because they came in after the hour for settling the books had arrived: and that in some instances there had been errors in the date of checks. When the account was corrected in this way, the balance, he said, would sometimes be for them and sometimes against them: and he added that a statement of their account thus corrected would, as he understood, be prepared and laid before the court. This however was never done.

Thomas Finley was then called, and examined on the part of the Traversers. He gave in evidence that he was present at the Board on the 20th of May 1819, when M'Culloh's removal was officially made known to him; that M'Culloh then stated the practice of the Branch had been to honour checks of men in good credit, whether they had money in Bank to meet them or not; and to give them notice when they appeared to be overdrawn; and that when special or express permission had been given to overdraw, it was by his order to the Clerks, who were free from all blame in such cases: That M'Culloh also suggested to the Board the propriety of passing an order, expressly forbidding overdrafts, if they disapproved of such a discretion in the Cashier; which was assented to, but not reduced to the form of a written order: That no such order had been given before: That there had been some previous cases

of overdrafts,' when paper had been offered for discount to cover them when they were discovered, and the discounts granted, and that one such case had occurred at an early period of his directorship.

Here the evidence for Traversers was closed. The Attorney General, in reply in evidence, produced the books of the Branch Bank, and shewed from them that during the whole period from 19th of January to the 20th of May 1819, both inclusive, there were very few credits to account of S. Smith & Buchanan for Bills or Notes lodged for collection; and none after the 23d of April in that year.

Here the evidence was closed on both sides.

The Attorney General summed up the evidence for the State, and Mr. Kell and Genl. Winder for the Traversers. Genl. Harper replied. For the State it was contended, in relation to the Bills of Exchange from Georgetown, that throughout the whole transaction M'Culloh, as well as Clement Smith, acted officially: That the Bills were expressly remitted in payment of a balance due to the Baltimore Branch, from the Georgetown Bank, for payment of which M'Culloh had applied in his official character, by his letter of the 18th of November, 1818: That the effect of the whole correspondence was, to vest the property of the Bills absolutely in the Branch Bank, or more properly speaking in the Bank of the United States, through M'Culloh its agent: That the payment was absolute, although the extent of it, the amount of the reduction of debt, was to depend on the sum for which the Bills might sell: That if these Bills had remained in the Bank till M'Culloh was dismissed from office, and a successor to him appointed, the power to sell would unquestionably have devolved on his successor; which proved that the transfer of property was absolute: that unquestionably the Georgetown Bank could not have reclaimed these bills, but merely had a right to credit for their proceeds, or for what they might have produced, in case they had been sold improvidently: and that if they had fallen into the hands of any third person, the Bank of the United States might have maintained trover or detinue for them, and not the Bank at Georgetown.

The counsel for the prosecution further urged, that the whole manner of conducting this affair, on the part of the Traversers, clearly indicated a fraudalent design; the desperate situation of their affairs at the period of this transaction, November 18th, 1818, when as was fully proved in the former case, and was in evidence in this

they were utterly and hopelessly ruined by the fall of stock, which had rendered them insolvent to the amount of a million at least; the pressing demand made upon them by the Browns of Liverpool for a large payment on account of their joint stock debt to that house: and above all the omission, evidently studied, to file these letters in the Bank, or make any entry in the books in relation to the transaction: That if there was a sale to S. Smith & Buchanan, it was manifestly fictitious and fraudulent; because M'Culloh personally well knew, at the time of this pretended sale, that S. Smith & Buchanan were utterly insolvent, and their note not worth the paper on which it was written: That the date of the note given for this pretended purchase, June 5th, 1819, nearly six months after the purchase is alledged to have been made, clearly proves it to have been an after-thought, or subsequent devise, resorted to after detection: That the application of these Bills to the payment of a debt, in which the Traversers were jointly and equally interested, was *full proof, especially when taken in connexion* with their relative situation in the Bank, and the other circumstances of the case, that there existed between them that community of object and means, and that mutual understanding in carrying on the operation, which law and reason declared to be the best evidence of conspiracy: and finally, that it was impossible to *look at all the circumstances of the case and the parties, and entertain* a doubt of Buchanan's full knowledge of the true situation and ownership of these Bills of Exchange, at the time when he entered into the fraudalent-combination with the Traverser M'Culloh, to apply them to their mutual use.

As to the overdrawings they contended, that nothing could be *more clear than the fraudulent breach of trust, and violation of duty*, by which they were made and permitted, or the fraudulent combination of which they were the object: that as far as appeared in proof, indeed, they were for the benefit of Buchanan alone, or of the house with which he was connected; but this was immaterial because it was clear law, that if two fraudulently conspire for the sole benefit of one of them, it is conspiracy in both: that here the fraud was manifest; because this was not a single act of overdrawing, which might have proceeded from inadvertency, but a regular series for four months, with but two interruptions, which occurred on the 6th and 9th of April; after which the operation continued without any intermission, till the 20th of May, the day on which M'Culloh was dismissed from office: That these overdrafts went on re-

gularly and progressively increasing, from the 3rd of May, when they amounted to $24,285 21 to the 19th, when they reached the height of $39,916 24: That it was most worthy of remark, with a view to the true nature of this operation, that on the 19th of May, 1819, the last day of M'Culloh's controul in the Bank, the overdraft was increased $1750 88: That an inspection of the list given in evidence shewed, that during the greater part of the period of four months to which it extended, if not during the whole of it, and especially during the latter part, Buchanan, in the name of S. Smith & Buchanan, resorted regularly and almost daily to the Bank, for all the money he wanted, for his expenses and every other purpose; and this at a time when he perfectly knew himself, and was perfectly known by M'Culloh, who permitted and systematically concealed these in-roads on the funds of the Bank, to be hopelessly ruined, and insolvent to the amount of a million at least: and that, consequently, when Buchanan took and M'Culloh connived at his taking this money, they both knew that he never would be able to repay principal or interest, which in fact never had been done, and therefore could not have intended to pay either; a circumstance which amounted to full proof of the allegation in the second count in the indictment, which related to the intention to pay interest, admitting it to be material.

On the part of the Traversers it was argued, that the whole of the letters taken together, which were fully reviewed and commented on by the counsel, shewed that no property in the Bills was transferred to the Bank of the United States; but merely an authority given to M'Culloh as the Agent of the Georgetown Bank, to sell them and apply their proceeds to this purpose: That unless the Branch Bank agreed to accept them in payment at par, there was no payment, and the Georgetown Bank continued liable, and might forbid a sale under par: that the Branch Bank has constantly refused to consider these Bills as a payment: That although the Bank of the United States might have maintained trover for the Bills, that did not prove an absolute transfer of property in them; because on general principles a special property will support that action: That M'Culloh, as Cashier, had no power to receive these Bills in payment, nor was any special authority shewn; and consequently his receipt of them could effect no change of property: That in the letter of Nov. 19th, 1818, Clement Smith asserted, by necessary implication, a continuing subsisting power over the Bills; and might at any time have countermanded the authority given to

M'Culloh to sell: That if M'Culloh had regarded them as the property of the Bank of the United States, he would have endorsed them as such: and that he forbore to do so, because the Bank did not think proper to be answerable for their payment.

In relation to the overdrawings it was contended, that there could be no design or fraudulent combination, as respected those of May 19th, 1819, which seemed to be most relied on; because M'Culloh went out of office without any previous warning; and that as Buchanan was charged on the books with all the sums thus overdrawn, this second count and the evidence given under it, were embraced by the principles on which the preceding case had been decided.

The argument being closed Judge Hanson stated it to be the opinion of the Court, he and Judge Ward concurring, that the Traversers were not guilty, and that a judgment of accquittal must be entered, which was accordingly done. For this opinion no reason was assigned. Judge Dorsey observed that he had not yet had time to make up his opinion in the case, which required further reflection. He afterwards ordered his concurrence to be entered, for reasons which are explained in the following opinion.

I AM of opinion that the Traversers must be acquitted on both counts. By the first, they are charged with a conspiracy, to defraud the President Directors and Company of the Bank of the United States, by embezzling Bills of Exchange to the amount of six thousand and eighty pounds sterling, drawn on certain persons in London, and which M'Culloh as Cashier of the Office of Discount and Deposit, had received in payment of a debt due from the the Farmers' and Mechanics' Bank of Georgetown, in the District of Columbia, to the President and Directors and Company of the Bank of the United States. *I have no doubt that the Bank had* an interest in those sterling Bills, and that a conspiracy to embezzle them, would have been a fraud on the Bank. But I am not satisfied by the evidence in the cause, that Buchanan knew at the time that he sold them to Brown and Sons, that M'Culloh had received them as the Cashier of the Office, and in liquidation or discharge of the debt due from the Farmers' and Mechanics' Bank. And unless Buchanan knew that the Bills had been remitted to M'Culloh, as the property of the Bank, he could not have conspired with M'Culloh to defraud the Bank. It is true that Buchanan was the President of the Office, when M'Culloh received the Bills, and

that he continued to act as such, posterior to the period at which he sold the Bills to Brown and Sons: But it is not necessarily to be inferred from those circumstances, that Buchanan knew that the Bills had been transmitted to M'Culloh in his official character. The correspondence of the Cashier of the Farmers' and Mechanics' Bank, was with M'Culloh; and altho' it is highly probable, that Buchanan might have seen the letters, yet his official situation does not conclusively warrant the presumption, either that he did in fact see them, or that their contents were disclosed to him.

The second count charges the Traversers with a conspiracy to defraud the Bank, and to obtain and embezzle fifty three thousand dollars, for the purpose of having and enjoying the use thereof, for a long space of time. In support of this count, it has been proved, that M'Culloh in violation of his duty as Cashier, and in express contravention of the rules established by the Parent Board, for the regulation of its Offices, did permit Smith & Buchanan to draw from the Office, large sums of money by repeated acts of over-checking, to the great injury of the institution. The question, which presents itself, is this: Does this testimony support the second count? I am inclined to think it does not: The count charges the Traversers with a conspiracy to embezzle $53,000 for the purpose of having and enjoying the use thereof, &c. The money was checked from the Bank by Smith & Buchanan, and must be presumed according to the practice in such cases, to be received for the sole use of the party checking.

THIRD INDICTMENT.

THE THIRD CASE was then called, and the trial proceeded before the court, upon the plea of not guilty and submission, as in the two former. This was also an indictment against James A. Buchanan and James W. M'Culloh, and contained two counts.—The first alleged in substance that the Traversers, one being President and the other Cashier of the Office of Discount and Deposit of the Bank of the United States in Baltimore, entered into a fraudulent combination on the 4th day of March 1819, to cheat and injure the Bank, by getting its property into their possession out of the Branch at Baltimore, to the amount of twenty five thousand dollars in money or bank notes, without the consent or knowledge of the Directors of the Bank or Baltimore Branch, and by false and fraudulent devices and indirect means, with intent to retain and use it two months: and that for the more effectual perpetration and concealment of this fraud, M'Culloh should from time to time cause false and fraudulent entries to be made in the books of the Branch Bank, representing that the money or bank notes so to be taken out, were loaned on good security: and that in pursuance and execution of this fraudulent conspiracy, Buchanan with the knowledge privity and consent of M'Culloh, the former still being President and the latter Cashier of the Baltimore Branch, did draw out twenty five thousand dollars of the property of the Bank, in money or bank notes, from the Branch in Baltimore, without the consent privity or knowledge of the Directors of either bank, for the purpose of applying it to his own use, without giving any security for the repayment; and that for the more effectual perpetration and concealment of this fraud, he and M'Culloh procured false entries to be made in the books of the Branch Bank, representing the money to have been lent on a Bill of Exchange drawn by the house of S. Smith & Buchanan on Daniel C. Holliday of Louisiana, for twenty five thousand dollars, and transmitted for collection to the Branch Bank at New Orleans, which had thus be-

same accountable for this sum: when in fact there was, as they well knew, no such Bill of Exchange.

The second count charged them with a fraudulent conspiracy to cheat the Bank, through the Baltimore Branch, of fifty three thousand dollars, by embezzling its property in money or bank notes to that amount, by false and fraudulent devices and indirect means; but without alledging any thing to have been done in execution of the scheme, or any particular means to have been devised for its execution. This count charged that the money was to be thus obtained and embezzled "for the purpose of having and using it two months without paying interest, or giving security for the repayment of the principal."

It was agreed, as in the next preceeding case, that all the testimony adduce on either side in the first case, should be considered as in evidence in this.

The Attorney General then opened the indictment, and proceeded to adduce the testimony under the second count alone; it having been discovered that there was a variance between the first count and the evidence, which rendered it inadmissible there. This variance consisted in alledging, that the bill on Holliday was drawn by S. Smith & Buchanan, without stating in whose favour: whereas it appeared by the evidence, that it was represented on the books, as a Bill of Exchange drawn by James W. M'Culloh on Daniel C. Holliday, in favour of S Smith & Buchanan. The testimony relating to this matter was therefore applied to the second or general count.

For this purpose Thomas B. Rutter, one of the book-keepers of the Baltimore Branch, was sworn and examined on the part of the prosecution. He proved that he was a book-keeper of that institution on the 9th of March, 1819, on which day by order of James W. M'Culloh then Cashier, he made the following entry in the day book:

"O. D. & D. New Orleans To S. Smith & Buchanan
J. W. M'Culloh's draft at sight on Daniel C.
Holliday, favour S. S. & B. $25,535."

He then produced the book, and read the entry from it to the court, in those words.

Mr. White the present Cashier of the Branch, was then called and sworn on the part of the State. He proved that after he came into office as Cashier, on the 20th of May, 1819, it was discovered, that no such draft as the one described had been forwarded to New-

Orleans, nor as far as the clerks knew had been in Bank—he therefore on the 27th May, directed the entry to be reversed.

Mr. White then produced three checks of the same date with the entry, March 9th, 1819, under the signature of S. Smith & Buchanan, which were proved to be in each case in the hand writing of the Traverser James A. Buchanan, a partner of that house. These checks were all made payable to Daniel C. Holliday or bearer. One was for $16,250, one for $6,700 and one for $2,585; making up the precise amount of the entry $25,535. He stated that they were found by him in the Branch Bank, when he went into office as Cashier; from which circumstance, and from their being crossed in the usual manner, it appeared that they had been paid. They are as follows:

"*No.* *Baltimore, March 9th,* 1819.
Office of Discount and Deposit, pay to D. C. Holliday or bearer, sixteen thousand two hundred and fifty dollars, no cents.
S. SMITH & BUCHANAN.
16,250 dollars cents"

"*No.* *Baltimore, March 9th,* 1819.
Office of Discount and Deposit, pay to D. C. Holliday or bearer, six thousand seven hundred dollars, and no cents.
S. SMITH & BUCHANAN.
6700 dollars cents."

"*No.* *Baltimore, March 9th,* 1819.
Office of Discount and Deposit, pay to D. C. Holliday or bearer, twenty five hundred eighty five dollars, and no cents.
S. SMITH & BUCHANAN.
2585 dollars cents."

Dennis A. Smith was called to prove the time of D. C. Holliday's death. He said he had not been advised of his death by any person in Lousiana—from his recollection he was confident it took place in the spring of 1819. He retired and soon after appeared before the court and said that he had seen, since he gave in his evidence, a letter dated in March 1819, from Jos'h Saul to James W. M'Culloh announcing the death of Mr. Holliday; which appeared to have been received in Baltimore on the 27th of that month.

Mr. White was then called again, and proved that early in June 1819, James W. M'Culloh called at the Branch Bank and delivered to the witness his own note dated 3d June, 1819, for this sum of $25,535, and promised to secure it by a mortgage on a large sugar estate in Louisiana, which he never did; and that the note, and the whole sum thus drawn from the Branch Bank, still remained unpaid. The whole sum principal and interest, was consequently lost, by the insolvency of the parties.

Here the evidence for the state, in relation to this transaction, was closed.

Notice had been given to the Traversers and their Counsel by the Attorney General, at an early stage of the trials, that under the second count in this indictment, he would give in evidence a speculation in Bills of Exchange to a very large amount, which appeared to have been carried on by them, with the funds and at the risk of the Bank; and on which a balance remaining due when their failure took place, had been entirely lost. He now proceeded to adduce this proof.

For this purpose Mr. White, the Cashier of the Baltimore Branch, was again called and examined.

He proved that after he took possession of the office, in May 1819, he observed in the books of the Branch an account, entitled "Foreign Bills of Exchange Account" on which there was a balance due to the Bank of $5405 60: That upon enquiry of James W. M'Culloh the Traverser, on the subject of this account and balance, he directed the balance to be divided into two parts, and one of them to the amount of $1164 59 to be charged to his separate account, and the residue $4241 01, to the joint account of himself and S. Smith & Buchanan; both with interest from December 31st, 1817; and that those sums still remain due and unpaid both principal and interest.

The books of the Bank in evidence in the former case, were then referred to; where the account appeared at length, and the balance as he had stated it. To shew more particularly the nature of the transaction, and to give some idea of its extent, the two following items of the account were read.

O. D. & D. Baltimore, September 17th 181[illegible]

Exchange Account To J. W. M'Culloh

For this sum lent upon the Funded Debt of the U. S. belonging to himself

and S. Smith & Buchanan and sent for sale to Baring, Brothers, & Co. London—Sterling Bills being drawn for like amount by S. Smith & Buchanan on Baring, Brothers, & Co. and delivered to J. W. M'Culloh Cashier, for sale, who is to apply their proceeds to liquidate this loan with interest from the 16th inst. until so paid—viz:

$50,000	bo't of W. Y. Purviance, *a* 10 per. cent. pre.	5,000	55,000	
84,931 65	do	8,493 16	93,424 81	
40,306 43	bo't of Wm. Bruff, *a* 10¼ per. cent pre.	4,131 40	44,437 83	
105,000	" John Donnell, *a* 10¼ per. cent pre.	10,762 50	115,762 50	
85,945 49	" Allen, Tolbert, & Co. *a* 10¼ per. cent pre.	8,809 41	94,754 90	
40,625	" W. Y. Purviance, *a* 10 per. cent pre.	4,062 50	44,687 50	
2,500	" L. Buchanan, *a* 10¼ per. cent pre.	256 25	2,756 25	
15,129 42	" Wm. Bruff, *a* 10 per. cent pre.	1,512 94	16,642 36	
17,936 10	" Wm. Bruff, *a* 10 per. cent pre.	1,793 61	19,729 71	
	½	82 66	82 66	
4,400	" Lloyd Buchanan, *a* 10 per. cent pre.	440	4,840	
$446,774 09		$45,344 43		$492,118 52

O. D. & D. Baltimore, September 25th, 1817.

Bills of Exchange To J. W. M'Culloh

For loan upon Funded Debt belonging to himself and S. Smith & Buchanan, which loan with interest, is to be liquidated by the sale of Sterling Bills.

No. 43	6 per. cent of	1813	2000
44	"	"	2000
45	"	"	2000
46	"	"	2000
47	"	"	2000

No. 48	6 per. cent of	1813	1363 63	
51	"	1812	5000	
6	"	1814	10,526 31	
182	suppl. 6 do.	1814	102 28	
4	funded 6 do. rec. note stock		5,000	
				31,992 22
at 8½ per. cent advance exclusive of dividends, payable on the 1st of October next,			2,719 33	
				34,711 55

The Attorney General then stated, that it did not appear from the books of the Branch Bank, nor in any other manner as far as he had been able to learn, that it had at any time employed any part of its funds, or in any way authorized their employment, in any such speculation in Foreign Bills of Exchange as this account imported: nor was any attempt made on the part of the Traversers, to prove that such an authority had ever been given, either by the Branch or Parent Boards; or that the operation had ever been in any manner communicated to the Parent Board, or any information of it given to the Branch Board, otherwise than by placing the account in question in the books. It was in evidence in the first case, and consequently in this, that the whole business of Bills of Exchange, in the Baltimore Branch, was claimed and exclusively exercised by the then President and Cashier, as executive business; so as to preclude any enquiry into it, on the part of the Branch Board.

Here the evidence for the prosecution was closed.

On the part of the Traversers none was offered, in relation to the second branch of the charge; the speculation in foreign Bills of Exchange. With respect to the pretended draft on Daniel C. Holliday, and the money drawn under colour of it from the Branch Bank, it was not alledged, or even intimated, that any such draft had ever existed; or that the Traversers or either of them ever had a right or authority to draw on Holliday, for the sum in question. The defence was confined to an attempt to shew, that S. Smith and Buchanan had a claim against him to the amount of five thousand dollars.

For this purpose Dennis A. Smith was called, on the part of the Traversers. He proved that some time in 1818, he purchased a sugar plantation in Louisiana, from a Mr. Saul of New Orleans; for which a prompt payment of $10,000 was to be made, and the

rest of the purchase money paid in annual instalments without interest: That he paid the $10,000 by drawing a bill on S. Smith and Buchanan, and that the possession of the plantation was to have been given, on the payment of said bill: That he was convinced that this property was capable of being rendered advantageous, in the hands of a person who could give it the proper attention; and recollecting that S. Smith & Buchanan would probably suffer loss, in consequence of the last purchase of bank stock from him, which some time after the purchase he understood was made for his the said Smith's benefit, he wished to make them some return, and offered the purchase of the sugar estate to them through James W. M'Culloh, on condition of their paying the said bill of $10,000: That Mr. Buchanan on the part of the house, finally agreed to the proposition; on which the bill for $10,000 was paid, and the transfer made. This took place some time in the latter part of February or early in March 1819.

Mr. Smith further stated, that while the communications on this subject, between him and James A. Buchanan, were going on, he suggested to Buchanan, as a motive for entering into the purchase, that Mr. Daniel C. Holliday, a gentleman formerly residing and well known in Baltimore, who had removed some years before to Louisiana, and been engaged there in cotton planting, was at that time in Baltimore, and soon about to return to New Orleans; and that probably he would be willing to join them in the purchase of the sugar plantation, and to take on himself its superintendance and management, for which he was well qualified: and that he understood and believed that Holliday did in fact join them in the purchase, and agree to refund to them one moiety of the $10,000 mentioned above.

He further stated that he had placed on said plantation sundry negroes, which cost about ten thousand dollars; which said negroes he offered to transfer and did assign, together with his right to the said plantation, for the sole object of indemnifying said S. Smith & Buchanan and the other gentlemen concerned with them, for any loss which the purchase of the stock might occasion—The value of said negroes he did not require of them, nor did they ever pay it to him.*

* This testimony of Mr. Smith, after it was prepared for the press, was sent to him by a special messenger, for his revision and correction; and was corrected by him, as it is here presented.

General Samuel Smith, the senior partner of the house of S. Smith & Buchanan, was next called on the part of the Traversers. He swore, that in the month of June 1818, his partner, J. A. Buchanan told him that Dennis A. Smith had made a very valuable purchase of a Sugar Estate in Louisiana, on which he had placed Negroes (in addition to those on the estate) of the value to the best of his recollection of 10 or $12,000; that he considered the purchase of great value, and was desirous of transferring it at cost, (and without any consideration for the negroes placed by him) to the parties who had purchased the Bank Stock from him, as a remuneration for the loss they were likely to sustain on the last purchase made by them of him. The next day D. A. Smith called at the counting house, when George Williams was present, and made his proposition to the same effect. After he left the room G. Williams and S. Smith told J. A. Buchanan that they would have nothing to do with the purchase, the witness observing that they had better attend to their mercantile affairs with which they were acquainted, and not embark in a business they did not understand, entirely dependant on agents. J. A. Buchanan pressed the purchase as one likely to afford great advantages.

Some time after J. A. Buchanan informed S. Smith, that Daniel C. Holliday had offered to take one moiety of the estate; that all the money which would be required would be the amount advanced by D. A. S. when he made the purchase (as he believed $10,000,) one moiety of which Daniel C. Holliday would account for; and that Mr. Holliday had no doubt of being able to pay the instalments as they became due from the products of the estate. J. A. Buchanan pressed the purchase on the ground that it would give something handsome to meet the loss we were likely to sustain from our negotiations with D. A. Smith. Thus pressed and thus assured he (S. S.) gave a reluctant assent, and the contracts were, (as he was informed) completed. Some time in the Autumn of the same year, S. Smith became on reflection, dissatisfied with the purchase, and pressed J. A. Buchanan to relinquish it to Mr. Saul, or to sell to some other person, and he promised to use his best exertions to comply with the wishes of S. S On the return of S. S. from Congress in the spring of 1819, he became more uneasy in consequence perhaps of the death of D. C. Holliday, and again asked J. A. B. if Mr. Saul would not take back the property, or if no other person could be induced to relieve S. S. & B. from the purchase. A few days after J. A. Buchanan informed him that

James W. M'Culloh would take the whole purchase to his own account, and it was conveyed to him as soon as the title could be prepared.

The witness took occasion to enter into some explanations concerning the manner the business of his house had been conducted: That he had brought up J. A. B. from the age of 13 years, that he had established him in the Dry Goods business soon after he became of age, and some years after had taken him as a partner in his general commerce: That from that period such was his confidence in him, that he seldom looked into the books of accounts: That he does not remember to have ever looked into the Bank Book until after the failure of the House: That the finances of the House were under the sole management of J. A. Buchanan: That the witness knew little of them, owing in part to his long and frequent absence in Congress, and at watering places for the health of his family, and principally to the unbounded confidence he placed in the capacity intelligence and integrity of J. A. Buchanan: That he had approved of the first and second purchases of stock from D. A. Smith: That he was in Congress when the last purchase was made, and that he was not consulted and knew nothing of it, until it was completed; after which he was informed that another purchase had been made principally with the view of extricating D. A. Smith from his difficulties, but without stating particulars. *Some time* after he pressed J. A. B. by letter to sell the Benevolence Stock (for by that name it was denominated) but he was sanguine, and did not sell: That when the purchase of the Louisiana Estate was made, Bank Stock was at 140 per cent, at which rate, if sold, (he believed then and now) would have covered the cost (without loss) of the whole *of that Stock held by the parties. Of course that they were* free at the time to make any purchase they might have deemed adviseable.*

Here the evidence was closed on the part of the Traversers.

The Attorney and his associates, conceiving this case in both its branches to be too plain for elucidation, proposed to the counsel on the other side to submit it to the court, without argument; to which they assented.

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* The testimony of General S. Smith, after being prepared for the press, was sent to him for his revision. He thought it best to write it out entirely himself; and it is here published from a copy of his own manuscript, which was compared by him and approved, before it was put to press

Judge Hanson, after a short conference on the bench, pronounced it to be the opinion of the Court, he and Judge Ward concurring, that the Traversers were not guilty, and that a judgment of acquittal must be entered, which was accordingly done. This took place on the 13th of April, 1823, the same day on which the decision of the second case had been pronounced. The Reporter had left the Court before the decision was made; but he has understood that no reasons for it were assigned. Judge Dorsey dissented, for reasons which are stated in the following opinion.

It was conceded in this case, by the counsel for the state, that the testimony produced on the part of the prosecution, did not support the first count in the indictment, inasmuch as there was a material variance between the matters therein charged and the proof; but I am clearly of opinion, that a combination to defraud the Bank has been established under the second count. It has been unquestionably proved that M'Culloh on the 9th March, 1819, caused an entry to be made on the books of the Bank, importing that a discount had been granted to S. Smith & Buchanan for twenty-five thousand five hundred and eighty-five dollars, on a draft of M'Culloh's in their favour, drawn at sight, on Daniel C. Holliday, of New-Orleans, and that the bill had been remitted to the Office of Discount and Deposit at New-Orleans for collection. It was further proved that no such bill was ever drawn; that the amount of this pretended discount was drawn from the office by James A. Buchanan; and that the whole sum has been lost to the Bank by the insolvency of the Traversers. It was argued on the part of the defence, that Holliday was indebted to the Traversers for an interest which he had purchased from them in a sugar plantation situated in Louisiana, and that M'Culloh really intended to have drawn the bill, but the unexpected intelligence of Holliday's death frustrated his design. The proof in the case is, that Holliday's death was not known in Baltimore until the 27th of March, 1819. Thus seventeen days intervened, between the date of the false entry and the news of Holliday's death. The defence therefore which has been relied on, has no foundation in *fact*. If the intentions of the Traversers were fair, why was not the bill drawn and deposited in Bank, at the time when the entry was made? Want of time cannot be urged as an excuse, as the draft might have been

written in three or four minutes at most. And surely the interval of time between the 9th and the 27th of March gave them a full opportunity of writing, endorsing and depositing the bill. Why did not the Traversers, when they had received the news of Holliday's death, refund the money to the Bank?—they could not but know that they had taken it without authority, and in contravention of the practice and usage of all banking institutions, which require discounted paper to be deposited among the evidences of debt due to the Bank. It cannot escape observation, that this money was withdrawn from the Bank, after the Traversers had fabricated the stock list and pay list which were adverted to and commented on in a former opinion. The case presents this simple aspect. The Traversers in violation of a sacred trust and under false representations calculated to deceive those who were interested in the due execution of the trust, have taken from the funds of the Office a large sum of money, which they converted to their own use, and have failed to return to the Bank a cent of their spoil. If such a case does not amount to a combination to defraud, I am at a loss to conceive in what the offence of a conspiracy to cheat consists. As this proof does in my opinion support the second count, it becomes unnecessary to examine and pass an opinion on the other proof which has been introduced, for the purpose of supporting a distinct and different fraud.

Thus ended all the cases, after having occupied the court constantly from March 21st to the 13th of April 1823, both days inclusive.

INDEX.

APPENDIX.

No. I.

Opinion of Harford County Court,

With the reasons assigned for it, by Judges Charles W. Hanson and William H. Ward, in the case of the State of Maryland against JAMES A. BUCHANAN, JAMES W. M'CULLOH *and* GEORGE WILLIAMS.

This is an indictment for a conspiracy to defraud the Bank of the United States; the indictment is laid against James A. Buchanan, as President of the Office of Discount and Deposit of the Bank of the United States, at Baltimore, James W. M'Culloh, as Cashier thereof, and George Williams, as Director of the Bank at Philadelphia. The *gist* of the charge is; that they conspired to use, and did use, the sum of fifteen hundred thousand dollars, the property of the Bank at Baltimore, for the space of two months, without paying any interest for the same, and without securing the re-payment thereof; and, the said Cashier, for the purpose of concealing the same from the Directors, did, from time to time, make fraudulent and false entries and statements, that the said money was loaned on good and sufficient security in capital stock of the bank, pledged and deposited therefor. To the indictment, the defendants have demurred, 1st. On the ground that a state court has no jurisdiction, but that the matters alledged in the indictment are cognizable (if at all,) in the Courts of the United States; and secondly, that the facts

charged do not amount to an offence indictable. This is substantially the case as argued before the court. Upon the question of jurisdiction it is not necessary to decide, because the Court think, that the facts do not amount to an indictable offence; and for their opinion the following reasons are assigned.

That the doctrine of conspiracy, as urged in support of these indictments, is exceedingly complicated, and involved in much doubt even in England, there can be no hesitation in admitting; and that it is new to the people of Maryland, cannot be denied; the principles of their criminal laws have always been regarded by them as palpable and unshifting, as the fixed and visible boundaries of their lands. But it is not upon the belief only, (though that would be amply sufficient,) that this doctrine has not be recognized and adopted here, that the opinion of the court is exclusively founded—it is, that the decisions of the British Courts are not sufficiently consistent and uniform in the reasons assigned for them, to enable this court to deduce from them such clearly established principles, as, in criminal matters, are deemed essential to authorise their application to new cases; that even in England, where the rules of penal law are not unfrequently tyrannically capricious, the doctrine of cheats, effected at common law by public false tokens according to statute 33 Hen. 8th, by private false tokens or by statute 30, Geo. 2d. by false pretences, or even by a conspiracy, has never been so strained, as to convert a mere private fraud, or a breach of trust into an indictable crime.

It is here proper to notice the luminous discussion upon the extent to which the common and statuary criminal law of England is obligatory upon this tribunal. It is so difficult to explore almost any principle of common law to its source, that we apprehend a decision of the King's Bench of yesterday is as much a part of it, as the most ancient adjudication; but, we conceive, that the doctrine now set up cannot be recognized here, unless adopted by the Courts subsequent to our emigration. The common law is a work of gradual reformation; and, of consequence, has been alternately improved and impaired; it is the common sense of a nation concentrated into rules, which, from time to time, have been found suited to their local and other circum-

stances; and hence it is difficult to believe, that the people of Maryland, in their bill of rights, meant to declare themselves subject to the operation of rules, no matter at what period British Courts should adjudicate them into a formal existence, without respecting their own local and other circumstances. The bill of rights declares, "that the inhabitants of Maryland are entitled to the common law of England, and the trial by jury, according to the course of that law, and to the benefit of such of the English statutes as existed at the time of their first emigration, and which by experience have been found applicable to their local and other circumstances and of such others, as have been since made in England or Great Britain, and have been introduced, used and practised by the courts of law or equity." It has been contended, that the true construction of this clause is, that the inhabitants of Maryland are to be governed by the common law, as it was brought here by our ancestors, and by such statutes only as existed at that time, which were suited to our condition; and that with respect to statutes since made, to be in force here, they must have been introduced, used and practised by the courts of law and equity. This position the Court considers the true one in all criminal matters; and, whether in civil cases it be altogether true, or in part only, or how far it may be modified, is not material to the present question; but, with a view of ascertaining with precision, how far the alterations or amendments which have been gradually introduced into the system, particularly in commercial law, of which Lord Mansfield and other judges have made almost a distinct science, by declaring, not what were or had been the rules of the common law, but what they ought to be, it is important to enquire, what authority the decisions of the British courts, and the reasons for them are entitled to at different periods of our settlement, before and since the revolution; and whether the courts of Maryland are bound to regard them, not only as conclusive evidence of what the common law is, but the reasons also, as the best that could be adduced. We think American courts go quite far enough, when they yield to British authority where the point in question is expressly decided, without paying such implicit de-

ference to the "sayings" of British judges, as to suffer them to be wrought into authority by analogy.

The Bill of Rights, we conceive, meant to say, that although the people of Maryland were politically separated from Great Britain, the rights of property and personal safety, should be regulated by the same code of laws they had been accustomed to. But by insulating the first part of the clause, it might be construed, *ex vi termini* to mean, that *all* the common law, be it then or hereafter what it might, should be in force in this state; and that the restriction was pointed only at the statutes, by designating such as existed at the time of our first emigration, &c. and such others as had been introduced, used and practised under; thus making a distinction between statutes before and since our colonization, while none is made as to the common law. Practically, however, our courts have alike regarded the common law and the statutes; such parts of both only as were applicable to our local and other circumstances, have regulated their deliberations, and the fact even of statutes having been introduced, used and practised under, cannot be deemed as conclusive evidence of their applicability. Hence, the courts of Maryland, as well as those of England, have always resorted to what has been, with precision, termed Judicial Legislation; and the latter have, from time to time, declared by adjudication, not only what was the common law of England, but what parts of it are in force in this country. This has been repeatedly done. The case of Griffith and Clements, recently adjudged in the court of Appeals, is a signal precedent, in which the common law rules, regulating the rationabilis pars of the widow, were disregarded, as now practised in England, and those of a date long anterior referred to. Very different, indeed, is the practice of courts here, from that in England, the actions of ejectment and replevin are common law remedies, and yet they essentially differ from the same actions in England; many of these changes have been effected by Judicial Legislation, independently of the acts of the colonial legislature. For why should the people of Maryland adopt the common law of England without reservation, whether applicable or not, but only such statutes as existed at the time of their first emigration, and which had been found, by experi-

ence, applicable to their local and other circumstances, together with such only as had been introduced, used and practised under? If they intended to adopt only such parts of the common law as was applicable to their situation, as most certainly they did, it might be asked, why did they not use words of exclusion? The answer to us is obvious; they thought the common law was already introduced, as far as applicable, and that it was understood by their Provincial court, to which they looked up and reposed in confidence, and that their legislatures, at any time, might alter, repudiate or adopt any part of it. For, numerous already were the laws enacted by the colonial assemblies, both civil and criminal, essentially altering those of the mother country; at the earliest period they legislated independently, and manifested a determination to regulate all internal concerns by their own laws. The same spirit prompted them, at last, to revolt at taxation, because unrepresented in Parliament; and the very attempt was one of the leading grievances assigned for the abjuration of their allegiance. Long before the revolution, so many branches of the English law had been altered and modified, that the laws of Maryland, civil, but more especially penal, presented a code which, though emanating from English precedent, might be distinctly recognized as a pandect; and it is not reasonable to suppose, that after the declaration of independence, the people, by declaring themselves entitled to the common law of England, thereby intended to render themselves punishable for crimes they were unconsious of committing, and to which a greater punishment was allotted than to any offence known to them before, whenever it should please a foreign court to adjudicate theories into laws, by excerpting authority from some recondite *obiter dicta*, at least in this country, long since obsolete and exploded, or too recently adapted to the vices of a foreign people.

It cannot be that the people meant to say, that if it should be discovered that the common law had, at any subsequent period been judicially legislated into a system different from that known to them antecedent to their emigration, and from that which they brought with them, that still so great was their attachment to laws they were ignorant of, that they intended, by

their Bill of Rights, to bind themselves indissolubly to those of a monarchy they had just renounced. But, whether the whole of the common law was ever in force in Maryland or not, the decision of British courts as to what it is, could never be exclusively binding upon the courts of Maryland; because, their decisions could not be reversed but upon appeal to the king in council; no appeal could de made to the King's Bench, as from the inferior courts in England, and in criminal cases, no appeal on the Crown side was ever allowed or prosecuted to any tribunal whatever; so that there being no legal channel through which the decisions of Westminster Hall could be made obligatory upon the courts here, no part of the common law, or any changes or modifications made subsequent to our emigration, could be judicially recognized.

The decisions of the court of King's Bench and other courts of England made since the Revolution, must be considered *ceteris paribus* on an equal footing with those made before the Revolution, but after our emigration. They all either constitute and make the common law—or are only evidence of what it is—if the former, they are not binding, (admitting the view of the court to be correct) unless in conformity to the law as it was antecedent to emigration—if they, on the other hand, are only evidence, they are examinable as such, and it follows therefore, that the reasons upon which they are founded must be particularly investigated—and when a British authority is adduced to a court in Maryland if the judges are not satisfied, that it affords a sound decision, it becomes their duty to examine the ground alledged to sustain it—they must look into the reasoning; if they find the authorities referred to, misquoted, principles palpably misapplied, or that it rests upon authorities notoriously inaccurate and containing flragrant contradictions, such an adjudication cannot be respected by them as evidence of the common law. Again—if a judge agrees in opinion with the authority, as to the point decided, yet if, upon examination, he finds the reasoning of the court manifesly and indisputably erroneous; so defective as to omit reasons that are conclusive, and to adopt unmeaning, weak, or doubtful ones, surely he is not bound by such reasoning; if through it, a case at Bar should be attempted

to be made analagous to the one cited, surely he may respect the authority as law, not the less because better reasons can be assigned for it. For example, suppose an endorser should pay a note to the holder, although he might have been absolved for the want of timely notice, and should afterwards bring suit to recover the amount back, and a court should very properly decide against the claim, but assign as a reason for their decision, that money paid by *mistake in fact*, was not recoverable; the court to whom the authority was produced, would concur as to the question settled, but would not consider itself equally bound to respect the reason assigned—the court would adopt the decision, but say, that the judge had not given the right reason; that money paid from *mistake in fact* was recoverable, but that money paid by mistake in law was not, where there was a moral obligation to pay; and, that was the reason why the endorser, after paying the note, though not legally bound to do so, could not recover it back; and if the merits of a case at bar rested upon the question whether money paid by mistake, *in fact*, could be recovered, and the case alluded to should be cited, and its reasoning urged as applicable to the matter sub judice, we apprehend, that it would be rejected without hesitation. These remarks are made with the intention, not so much of opposing any British decision, upon the question, as of meeting, *in limine*, a proposition strongly urged, that we are bound conclusively to consider the grounds upon which they are given in all cases the true ones, and of weight equally impressive with the decisions themselves. Guided by these considerations, every court in Maryland before it entertains any criminal doctrine, should be well satisfied that it is either a branch of the common law as it existed at the time of our first emigration, or of some statute, which, in the words of the Bill of Rights, had been by experience found applicable to our local and other circumstances.

The impression is almost uniform among the profession, that the rule of admitting remedial principles and statues was the reverse of that applied to penal ones; the presumption is in favour of the former being in force, but against the latter until it appears. For, nothing short of absolute despotism can operate with more direct oppression, than the power of judicial legislation in crim-

inal matters; let it once be established as the prerogative of courts, and it is the *judge* not the *law* that you must beware of offending. In civil cases the power of amplifying justice by adaptation of remedies is salutary and necessary; juridical science has been thereby moulded and perfective; man has no intuitive knowledge of civil right; his property is the created being of civil polity, he takes it on condition, and holds it by artificial rules, liable to the construction and modifications of the ministers of that polity; but his life and liberty are inherent properties, they may be employed in any manner not expressly forbidden; and although of criminal acts, man is always inwardly cognizant, yet, as human nature is too prone to transgression, to admit of all its immoralities and vices being the subject of legal punishment, he has a right to be expressly and literally forwarned what the law has forbidden; but, where is the security if courts and not legislators, exert the prerogative of compassing the ends of the government, by stretching, enlarging and constructively expanding any doctrine of the penal code; everyrule of which should be broad, palpable, and intelligible to the ordinary comprehension of the community? If otherwise, acts must be continually proclaimed offences long after they are committed, and punishments are prescribed, unknown before, as the consequence of their commission. Accordingly enquire of the people at large throughout the country and they never before heard of this offence; interrogate the oldest practisers of the law, search the records of your courts, consult the page of Blackstone, and you will find them all ignorant of the offence of conspiracy in the sense of these indictments; you will find their understanding of it confined to its old, broad and definable limits; that the crime of conspiracy, allowing its origin to be either at common law or by statute—consisted 1st. in persons combining to accuse another of some act, for which he might be punishable by some legally constituted tribunal; 2d. of a confederacy to do some act injurious to the public at large, as a combination of journeymen to raise their wages—3d, a confederacy to obstruct the cause of justice by an abuse of its courts: 4th, by a conspiracy among two or more men to do some act, which, if individually committed, would itself be indictable. There are some cases in the British books which

carry the doctrine further, and some particularly, which *seem* to authorize the principle, that acts in themselves innocent, if individually committed, are criminal if attempted by a conspiracy; but, upon close examination, we think, there is no such case; wherever this doctrine has *seemed* to exist, it is in reality where the act meditated was in its nature highly dishonest and fraudulent, through means of which the possession of money or goods was designed to be gained, and such as if effected by any means, would shew a general intent to defraud the public, and not of cases of breach of trust or private frauds, where from the *original personal confidence*, an improper use of the money already in possession, could only demonstrate a design to injure the particular individual to whom it belonged. To this length the doctrine has never been pressed, even in the courts of Westminster Hall, and we do not believe it would have been there extended as it has, were there not certain cases decided since our emigration, which have introduced and tolerated its extravagancies.

Even in England, where a people of an anxious and jealous temperament are easily exasperated by misrule into faction; fretted by sedition into rankling hatred of their rulers, or goaded by penury into guilt; where the vices of a restless and ambitious population are always fermenting into corruption; where new crimes, or new modes of committing old ones are daily perpetrated; where the subsistence of many is so precarious that every species of dexterity, is on the alert to supply the real wants of nature, or the artificial cravings of depraved appetites, and the invention of thousands is daily employed to elude the law, that they may depredate with impunity, and where, of course, there exists the necessary evil of pressing into service every word of the penal code as exigencies demand; yet public opinion discards even British precedent where the spirit of the law is fitted by torture to the dimensions of its letter. Hence the bulk British penal statutes to give power to courts and lengthen the arm of the common law. No offender in England would escape punishment for the want of law, if judges had power to make it of any other materials than those which were well proved, and taken from mines long since open and explored. And accordingly, the British law books report us cases where the power of the law has

overtaken offenders and punished their crimes. British history records occasions, where the indignation of the whole community was roused against crimes where the law was too impotent even to attempt the legal punishment of their perpetrators; and a memorable case of conspiracy, which was not adduced in the argument, but occured in the Reign of George II, 1731, serves to shew that no idea at that time existed, that a breach of trust tho' effected by conspiracy could be punished by any other tribunal than Parliament.

"The next object of importance (says Smollet, in his history of England) that attracted the notice of the house, was the state of the Charitable corporation.—This company was first erected in the year one thousand seven hundred and seven. Their professed intention was to lend money at legal interest to the poor upon small pledges, and to persons of better rank upon an indubitable security of goods impawned. Their capital was at first limited to thirty thousand pounds; but by license from the crown, they increased it to six hundred thousand pounds, though their charter was never confirmed by act of parliament. In the month of October, George Robinson, Esq. member for Marlow, the cashier, and John Thompson, warehouse-keeper of the Corporation disappear in one day. The proprietors, alarmed at this incident, held several general courts, and appointed a committee to inspect the state of their affairs. They reported that for a capital of above five hundred thousand pounds, no equivalent was found; inasmuch as their effects did not amount to the value of thirty thousand, the remainder having been embezzled by means which they could not discover.—The proprietors in a petition to the House of Commons represented, that by the most *notorious breach of trust* in several persons, to whom the care and management of their affairs were committed, the Corporation were defrauded of the greatest part of their capital: and that many of the petitioners were reduced to the utmost degree of misery and distress; they, therefore, prayed, that, as they were unable to detect the combinations of those who had ruined them, or to bring the delinquents to justice, *without the aid of the power and authority of parliament*, the house would vouchsafe to enquire into the state of the corporation and the conduct of their managers, and give such relief to the petitioners as to the house should seem meet.—The petition was gra-

ciously received, a secret committee appointed to proceed in the enquiry. THEY SOON DISCOVERED A MOST INIQUITOUS SCENE OF FRAUD WHICH HAD BEEN ACTED BY ROBINSON AND THOMPSON, IN CONCERT WITH SOME OF THE DIRECTORS, FOR EMBEZZLING THE CAPITAL AND CHEATING THE PROPRIETORS. Many persons of rank and quality were concerned in this *infamous conspiracy:* some of the first characters in the nation did not escape suspicion and censure. Sir Robert Sutton and Sir Archibald Grant, were expelled the house of Commons, as having had a considerable share in these fraudulent practices. A bill was brought in, to restrain them and other delinquents from leaving the kingdom, or alienating their effects." The above historical fact is adverted to, to shew how the doctrine of conspiracy in England, as applicable to frauds and breaches of trust, was regarded in the year 1731, *long after the date* of many of the legal authorities which have been here cited. The conspiracy was considered of a most extensive and serious nature, and so treated; but no information, indictment or prosecution of any kind was ever moved in the Court of king's bench; and, indeed, it is difficult to conceive how such a conspiracy could be reduced to any class of criminal offences; it was not attempted, even in England; and, it is impossible to apply it to the rules of cheats, or what is essential to make private frauds such: the offence has no attribute in common with them;—cheats are constituted by the means made use of to *obtain the possession* of money and goods, and cannot be deduced from the use or abuse of that possession. The Treasurer and warehouse-keeper had possession of the property. The members of parliament who were expelled, and other persons of distinction had not—and yet, although it might have been contended that the treasurer was only guilty of a breach of trust, why were not the others indicted for conspiracy? The case seems to be almost parellel to that before us.—Considered individually, they are both breaches of trust; for, although a demurrer *formally* admits the facts charged, and the present indictment *alleges* that they *conspired to obtain the possession* as well as embezzle the funds of the Bank, the legal consequence is not admitted; the demurrer is made for the purpose of raising the questions in the

case; but, that the obtaining of possession and embezzlement was such as to convert their individual breach of trust into a criminal act, because of an agreement so to use the funds of the bank, is denied.

We have no doubt that the doctrine of conspiracy, at common law, is, that it consists only in a combination of persons to do some unlawful act, which, if committed actually by an individual, would be indictable, unless some matter of public concernment is to be effected by it. We say at common law, because, under the latitude of construction given by courts to the statute of Edward, declaring who are conspirators, (which, by the way, is reported by Kilty, Chancellor, not to be in force, and therefore not to be used to eke out the common law-doctrine of conspiracy) there are certainly other classes of the offence.—Unless some such standard, as above stated, be the true one, the doctrine, by reason of its uncertainty, would be illimitable; for "there are perhaps, few things left so doubtful in the criminal law as the point at which a combination of several persons in a common object, becomes illegal. Chitty 566, vol. 3." Reject this plain and intelligible rule, and the extravagancies of the doctrine, you may in vain endeavor to exclude. Authorities have been produced to shew, that a conspiracy is a complete offence, though nothing be done in execution thereof; a case in Sir Blackstone's reports 892, 1 vol. has been cited, to shew, that a conspiracy need not be proved, but may be inferred from circumstances; and there are cases which say, that if two individuals agree not to buy their coffee of a particular grocer, it is an indictable conspiracy. In the cases of King vs. Lare, 6 T. Rep. 565, Rix and Williams, cited 2 Burr 1128, King vs. Lewis, it was settled and is not now denied, that a fraud, by a lie, no matter however plausible or ingenious or well calculated to deceive, unless something further is resorted to than the person's own assertion, as false token, forged, letter, or, as is contended, a conspiracy, is not indictable; because, it is said, ordinary care and precaution cannot guard against the latter, and it is the party's own fault to trust any thing, resting only for its truth upon the bare word of another. But what becomes of this reasoning when applied to unexecuted conspiracies? Its danger and its feebleness be-

come flagrant, whenever it attempts to unite the doctrine of private frauds and conspiracy together. Can ordinary care and precaution guard against an injury meditated by *one* man, any more than against any injury meditated by *two*, if nothing be done in execution of it, or one only is to be the actor? And yet, according to the doctrine as contended for, it would not stop at the absurdity, that, if two men agree together, *that one* of them shall, by means of false tokens, obtain possession of the money or goods of another, but do nothing in furtherance of the design: —nay, if they even repent and abandon the project, they are guilty of an indictable crime, and the severest punishment known to the law, is inflicted upon them—whilst a third, by a train of the most subtle and well-digested falsehoods, may actually defraud the owner of his goods and money, to any amount, with legal impunity; provided he has used no false token, public or private, and has resorted to no false pretence under stat. 30, Geo. 2d, and has been wary and crafty enough to have kept his knavery a secret. For, if he has, according to the doctrine thus contended for, communicated it to another, either before or after its commission, a conspiracy between them may be inferred, and need not be proved. Admit such rules of criminal law, and courts and juries may overflow your prisons and penitentiaries and erect a pillory at every corner of the street. Two merchants agree upon a speculation in flour—one sets out before the other to make purchases, and refuses to give the prices asked of him—this has a tendency to lessen the price;—the other follows him and actually makes purchases at a lower rate than that demanded of his partner. There is no proof of their having agreed upon this device; but it may be inferred, and they are indictable for a conspiracy.

Three young men are employed in a store, being entrusted with the money of the house, two agree to make use of a part of it, but do not carry their design into effect, the third appropriates the whole to his own use; the two who took no part of it are to be indicted and punished, while the guilty *one* escapes. Two men are in the habit, the one of drawing and the other of endorsing notes, upon which they borrow money from a third, they become insolvent, but still continue to obtain thus, the

funds of the other, and although they may have used no art, no cunning, or duplicity; yet, if they knew their insolvency, a conspiracy may be inferred, and would most clearly be within the doctrine now set up. Let the rules of ascertaining what are private cheats and conspiracies be once confounded, and the latitude of prosecution is interminable. But, attempt to apply them to breaches of trust, or where the possession was originally lawful, and their fallacy is egregious. But what is a breach of trust? What, when there is no trespass or felonious intent in taking goods, no subsequent conversion of them can amount to a felony, 1. Hawe, C. 33, cited 2, East, C. P. When the possession is honestly obtained upon a contract or trust, in the first instance, the subsequent dishonest conversion (except in cases where the privity of contract is determined,) is no other than a breach of trust, for which the party injured has a civil remedy, 2 East 817. What becomes of all the distinctions between frauds not indictable at common law, and cheats, either by statute or at common law, or conspiracies, to commit either legal or illegal acts? What need of false dice, public or private false token, or of conspiracies has a person, already possessed of money, to enable him to convert it to his own use. Is ordinary care and precaution any safe guard, whether he has such devices in his possession or not? Or are they less so because he suffers others to partake of his conversions. By having confederated, he may the better conceal his acts, but the concealment of an offence is no constituent of it, unless in particular cases, as in larceny where it may be evidence of intention.

It has been contended, that the act charged is a conspiracy at common law, and that it is also an offence under the statutes, they being declaratory of the common law. The earliest statutory recognition of conspirators is to be found in the 27 Ed. 1st. and consists only in directing, that they should be made the subject of inquest; and the statute of 33d. Ed. 1st. gives this final definition of them. "Conspirators, be they that do confeder and bind themselves, by oath, covenant, or other alliance, that every of them shall aid and bear the other falsely to indict, or cause to indict, or falsely to move and maintain pleas; and also such as cause children, within age, to appeal men of felony, whereby

they are imprisoned and sore grieved, and such as retain men in the country with liveries or fees, for to maintain their malicious enterprises; and this extendeth as well to the takers as to the givers; and steward and bailiffs of great lords, who by their seignory, office or power undertake to bear and maintain pleas and quarrels, that concern other parties than such as touch the estate of their lords." This statute is reported *not to be in force here*, but it has been contended, with masterly dexterity, that the origin of this doctrine may be traced to the third branch of the statute, and that few common law doctrines can be so distinctly explored to their source, that the whole of the common law upon the subject is not contained on the statute of Edward; that it is only declaratory of, and in affirmance of the common law; and, embracing only a part of Hawkins, definition C. 72, 84 is evidence of the common law only as far as it goes; but admitting that it does contain the whole doctrine, it sufficiently includes the case at bar; that the main object of the statute, is to prevent the combination of persons to do unlawful acts, not only by false indictments, but the use of any unfair means whatever, that it is proper, that the statute should be extended to cases as they arise, coming within its equity and principles, according as new modifications of society are productive of new crimes, that no breach of law growing out of a statute establishing some general principles has a clearer origin; and, that the case at bar, being a combination to cheat men of their money, is a malicious enterprize, and agreement to maintain each other in these enterprizes, true or false."

We think, however, that where the question is, whether or not an act is indictable, that it would be exceedingly dangerous and unprecedented to make it such by bringing it within, not the letter, but the spirit of the statute, which is at the same time urged only to be declaratory of part of the common law, and not as making a new law—for, if the offence existed at common law, it was punishable as well before as after the statute, and if the statute is declaratory, it can be regarded in no other light than as evidence of the common law, and as such it cannot be permitted to enlarge it. It is a penal statute, and it would be contrary to every established maxim of statute reading, to construe

it otherwise than strictly by confining it to its letter—to do otherwise would be to create another offence by implication out of those expressly declared. Is then a *conspiracy to defraud an* individual, without affecting the public an offence within the statute of 33 Edward First? The court think not, we cannot conceive that the first branch of the statute, which declares conspirators to be those who confeder, and bind themselves by oath, falsely to indict others, or falsely to move and maintain pleas and cause children within age to appeal men of felony, whereby they are imprisoned and sore grieved" has any *thing to do with the* cashier and two other officers of a Bank, converting the funds of the institution to their own use—nor can we comprehend, that the second and last branch of the statutes, which defines those to be conspirators who retain men in the country with livories or fees "for to maintain their malicious enterprizes, extending as well to the takers as the givers, and stewards and bailiffs of great lords, who by their seignory, office, or power, undertake *to bear, or* maintain quarrels, pleas, or debates that concern other parties than such as touch the estate of their lords or themselves" can have the remotest bearing upon the question of a cheat—practised by one private individual upon another. And that the Bank of the United States, as respects this argument, is but an individual, like any private Banking House, no *Lawyer* will deny. Banks are considered *in law*, trading *companies, and regarded* as *individuals* as much as private mercantile firms Every branch of the statute relates to some public interest, falsely to indict, an abuse of public justice, to maintain pleas is maintenance—also, an abuse of the administration of justice—causing children to appeal men of felony, infants being irresponsible—an abuse of courts—a clear public interest—such as retain men for malicious enterprize— a defiance of the *government*—a public interest—and so of the last branch, as to bailiffs of lords who maintain quarrels, &c.

The book of assizes however, enumerates another species o conspiracy alledged to be at common law, to be enquired *of*, and that is, the offence of a combination among merchants to regulate the price of wool: this was declared to be an offence by statute staple, passed 27 Ed. 1. the same year of the book of assizes; and *as*

such, independently of the common law, was directed to be enquired of as recorded in the book of assizes.

We will now investigate one single case, anterior to our emigration, which *seems* to contain doctrine *not* to be included in the class of conspiracies to injure individuals, by acts not otherwise indictable, or where public trade, public health, or some other public interest is affected, or where the course of law is perverted by the abuse of the administration of justice. The rest of the cases are either before courts, not now to be respected as legal tribunals, as Star Chamber, &c or contain no certain principles material to this argument.

Let us turn to the Poulterers' case 5th. Coke's reports in 8th of James 1st. This was a *civil* case against the Defendants, Poulterers, for a conspiracy falsely and maliciously to charge the Plaintiff with robbery, and cause him to be arraigned, indicted, and hanged, and in execution thereof, procured warrants for his arrest, and he was accordingly apprehended and bound to appear, but an ignoramus was returned by the Grand Inquest. It was moved, because he was not tried, and actually acquitted, that the action did not lie against the conspirators; but it was resolved, that the bill was maintainable; and divers other points, it is said, in this case were resolved; 1st. that there were means by common law to protect the innocent, before verdict; and although writ of conspiracy lie not till indictment and legitimo modo acquietatus, yet a false conspiracy shall be punished, though nothing be put in execution; and so, also, a conspiracy to indict or acquit, is punishable, though nothing be put in execution or executed. But what says Holt, in the case of King vs. Daniels, 6 mod. in the reign of Anne, quoted by counsel for the prosecution? "The case of Staring" (which was a conspiracy to impoverish the farmers of the King's revenue) says he, "was directly of a public nature, and levelled at the government, and the *gist* of the offence was its influence on the public, and not the conspiracy, *for that must be put in execution before it is a conspiracy;* if two or more *agree* to indict a man of a crime, of which he was not guilty, the very meeting and agreement is an *ill* and *unlawful* act, *but not indictable perhaps*, but if a meeting be to kill or rob, it may be indictable." Now, either Lord Coke or Lord

Holt is wrong, for they are directly opposed; or this Court is right, in the distinction they have made between conspiracies of a private nature, to injure individuals only, and those tending through them to affect the public at large. In the latter, the act meditated need not be put in execution, or be of an indictable character. The Poulterer's case goes further, however and settles, that a confederacy and false alliance, is a binding together, to do some "*unlawful act*," which the court punishes, though *unexecuted*, in order, through mercy, to *prevent mischief*. But Hawkins, in his definition of conspiracy, says, there can be no doubt, that all confederacies, *wrongfully* to prejudice another, are indictable. Thus differing with Coke, in substituting the word wrongful for *unlawful*; and hence it has been supposed, (although there can be no doubt that by the word "unlawful," taking the whole context together, Coke meant to attach criminality, either to the means used, or the degree in which the object was to be affected by them,) that *wrongfully* to prejudice, meant morally or *civilly*, but Lord Ellenborough, in the case of King vs. Turner, 13 East, expressly rejects this reading, and decides, that a conspiracy to commit a nocturnal trespass, (of so outrageous a cast as to induce one of the counsel for the prosecution to declare it individually indictable,) not an indictable offence, because the act could only be a *civil trespass* upon a private person. The Poulterers' case concludes thus: "a confederacy punishable by law, before it is executed, ought to have four incidents, first, it ought to have been declared by some manner of prosecution, as in the case of making bonds and promises one to the other; it ought to be malicious, as for unjust revenge; it ought to be false, against an innocent; and it ought to be out of court voluntarily." If this case be authority, as contended by the prosecution, what becomes of all the modern doctrine of conspiracies of a private nature being complete, though nothing be done in execution of them, that their object and the means are totally immaterial, and that the conspiracy itself is all that is to be looked for?

It is impossible to reconcile any two authorities, in such a view of the doctrines, and it is only by considering such principles as applicable to conspiracies only where the public at

large is concerned, that we can be preserved from yielding to the most egregious contradictions; and accordingly, Chitty, the most modern author who has devoted much attention to the subject, truly declares, that "what kind of agreement is illegal, seems not yet precisely settled, and that the decisions do not appear quite in unison with the points they profess to settle." We apprehend the Poulterers' case to be in favor of the rule adopted by the decision of this court. Having examined the case which we deem most pertinent, antecedent to the emigration of the colony, we will pass on to Hawkins's definition of conspiracy, at common law, and see how it is supported by the authorities it rests on by *reference*. He says, "it also seems certain, that a man may not only be condemned to the pillory, for a false and malicious accusation, but also branded; but since it doth not appear to have been solemnly resolved that such offender is indictable upon the statute, it seems to be more safe and adviseable to ground an indictment of this kind upon the common law, than upon the statute, since *there can be no doubt*, but that all confederacies, whatsoever, *wrongfully* to prejudice a third person, are highly criminal at common law; as where divers persons confederate together, by indirect means, to impoverish a third person, or falsely and maliciously to charge a man with being the reputed father of a bastard child, or to maintain one another in any manner whether it be true or false." For the first branch, the impoverishing a third person, he refers to 1 Levin, 62, 126, 1st Sid. 124, 1 Keble, 350, and what are these cases? The first Rex vs. Kimberly and Mary North, for conspiring to charge J S. with begetting a bastard upon the body of the said Mary, with a view of extorting money; upon motion in arrest of judgment, because there was no indictment found, the court said, that was not essential, and for authority quoted the Poulterers' case, which we have already adverted to. See 1 Levinz. 62. The next case Levinz, 126, Starling's case, was conspiracy to depauperate the excisemen: it was decided by the court *expressly* to be a conspiracy without an overt act, because it was of a public nature, having a tendency to diminish the King's revenue; the excisemen were not mentioned by name as individuals, but as excisemen. *So much*

for Hawkins's accuracy as to conspiracy for impoverishing an individual. The Poulterers' case is here also quoted as the authority, with Sid. 174 and Keble 350, and they will be found not more to be relied on in support of Hawkins's principles. It is said however, that nothing is to be inferred against his doctrine, because a wrong class of cases is quoted, as that might be the error of his commentators. It, however, leaves his definition to rest solely upon his *own* authority, unless *others* are supplied.

Let us now examine the second branch, "falsely to charge a man with being the father of a bastard child; (cases of this kind are abundant in the books, and have been adduced with a view of evincing, that it is indictable to conspire to charge a man with any thing injurious to his reputation, and which might subject him to indictment. The cases of bastardy are, however, *quieted*, by many cases in which it has been adjudged to be, within the statute of Edward, indictable, to accuse a man with any thing that might subject him to a charge, or to the cognizance of any court, temporal or ecclesiastical. They are however put more satisfactorily to rest by the statute of 18 Eliz. C. 3, which ordains, that two justices may take order for the punishment of the reputed father and mother. With regard to the last branch, the maintaining one another in any matter whether it be true or false—that would be individually indictable on many grounds, it includes an agreement to commit any crime whatever, but it is emphatically *maintenance*, one of the oldest offences known at common law, though not known here, according to Kilty, as far as affected by statute. Before we leave Hawkins's definition of conspiracy, we shall quote his 5d sect. inasmuch as it has been said, that although *verbal slander* is not indictable, the law is absurd enough to make a conspiracy to commit it punishable, although not a word has been whispered; and this out of pure tenderness to individuals, although it permits the grossest calumnies to be propagated against them, from the mouths of forty at the same instant without attempting to arrest them by any criminal process whatever. The third sect. says, "neither does it seem to be any justification of a confederacy, or appeal which was preferred, or intended to be, in pursuance of it, that it was insuffi-

cient, or that the court wherein the prosecution was carried on, had no jurisdiction of the cause, or that the matter of indictment did import no manner of scandal, so that the party aggrieved was, in truth, in no danger of losing either his life, liberty or reputation; for, notwithstanding the injury intended to the party against whom such confederacy is formed, may perhaps be inconsiderable, yet the association to *pervert the law, in order to procure it, seems to be* a crime of a very high nature, and justly to deserve the resentment of the law." From this section, emanates the true reason of many decisions, which have been made upon the authority of his definition, wherein he substitutes the word *wrongfully* for *unlawfully*, but which, would otherwise have been placed upon their true ground, viz: the abuse of public justice by making its courts the medium of fraud. And of this class, is, no doubt, that of Rex vs. Rispal 3. Bur 1320, which was a conspiracy to charge one John Chilton, with having taken a quantity of hair out of a bag, and afterwards receiving a sum of money to desist from all prosecution for the same; the court said the gist of the offence is the *unlawful* conspiracy to injure the man by this false charge. How was he to be injured but by subjecting him to indictment? and thus, in the words of Hawkins, "perverting the law, in order to procure it." We do not upon the whole, consider Hawkins's definition of conspiracy more correct than his definition of cheats which, he says, consist in deceitful practices in defrauding, or *endeavouring* to defraud another of his known right, by means of some artful device, contrary to the plain rules of common honesty." This 2, East 817, considers not sufficiently accurate, or distinct, to be taken as a definition. And clearly it is not, for if it was, it would include Wheatly's case (which we shall hereafter more particularly attend to,) and many others, that were adjudged not indictable for the want of some false token, public or private. If such definition were the true one, there would have been no occasion for the statute of 33 Henry 8, or the 30 George 2d.; for if it were indictable to *endeavour* to defraud, the means would be surely immaterial. We will now examine such of the cases cited as we deem at all important, without regarding particularly their order; they have been introduced, not so much on account of the points settled in them, and their analogy to the

case at bar, as on account of their "dicta:" or in other words, what it was not essential to say, in support of the principles laid down, as the reason of them. We are not disposed to reject those *dicta*, but we say, that they are examinable, and that, however respected they may be, they must be confined to the subject matter to which they relate For example, in a case of conspiracy to make false indictments, or accusations, as in bastardy cases, and a variety of others, which we consider as having relation to the public at large, we shall not take the *dictum* of a judge as of the same weight, in the case before us, as one pronounced in a case of a private cheat. The King vs. Best, 1 Salk 174, 6 Moder 187, 2 Lord Ray. 1167, was a charge for begetting a bastard child; all that was determined in them, is, that a conspiracy is the *gist*, and that nothing need be done in execution of it; and that it is the same thing whether the conspiracy be to charge an innocent person with a temporal or ecclesiastical offence. The case in Holts's Reports and 2 Roll Abrgmt, and Kebles's Reports 203, 254, 399, are all cases of false accusation, as well as the case of 2 Mass. 536. King vs. Kinnersly, which was a case of charging a man with an attempt to commit sodomy; the court said no overtact was necessary; conspiracy was the gist; and, that an attempt to commit sodomy was *itself indictable*.

We will now look at the cases which have been adduced by Chitty, and 2 Massachusetts reports. Commonwealth vs. Judand alios, in support of the position, that "there are many cases in which the act itself would not be cognizable by law, if done by a single person, which become the subject of indictment, when effected by conspiracy, which is punishable, although it be to do a lawful act, for unlawful purposes."

The first case T. Rep. 636, was an indictment against a magistrate for giving false certificates, that a high way was in repair, in order to screen those whose duty it was to keep it in repair; it was expressly decided, that it was illegal to conspire to pervert the course of Justice, which was a matter of public concern. The 2d case Campbell, 358, was a civil case. Sir James Mansfield said, if a body of men go to a Theatre with a settled design to damn a piece, there can be no doubt, that such deliberate preconcerted scheme would amount to a conspiracy. If people en-

deavour to effect an object by tumult and disorder, they are guilty of a riot; and so says this court; for as a riot is an indictable offence, a conspiracy to effect it is so, and Macklin's case was expressly a case of riot; the indictment was not for a conspiracy; besides, the public has an interest in the Theatre, and of course in the genius and talents of an actor, and a conspiracy to destroy him might be considered as an injury to the public. The 3d case 4 Bur. 2472, was a combination between officers in the East India service, to throw up their commissions. It was held unlawful to do so, and that the service did not thereby terminate; such an act might certainly be an injury to the public at large, and it was decided, that officers had not a right to throw up their commissions, and resign at all times, and under any circumstances. It was not a prosecution for a conspiracy, it was a civil action against Lord Clive, by one of the officers. The 4th case is that of a verbal slander, 1 Lev 62, and that we have already noticed; it was a case of bastardy, &c. &c. The 5th case 3 Maul and Selwyn, was a combination to raise the price of the funds on a particular day by false rumours, viz. that Bonaparte was killed, &c. this was expressly put upon the ground of its being a fraud, levelled against all the public. Lord Ellenborough says, the purpose itself is mischievous, it strikes at the *price of a vendible* commodity, and gives it a fictitious price by means of false rumours: and Hawkins makes it an offence, to raise the price of any commodity by false rumours, *individually* indictable.

There are other cases quoted by Chitty, 2d Bur. 993, 3 Bur. 1321, but these are cases of conspiracies to indict, and extort money thereby; Chitty concludes by saying, "To combine in raising wages, in resigning commissions, or expressing disapprobation at a Theatre, seem scarcely so detrimental to public tranquility as a malicious and nocturnal trespass, and yet the former had been holden to be indictable, and the latter a mere civil injury, 13 East. 231", and further he says, "it might be inferred, from the decisions, that to constitute a conspiracy, it is not necessary that the act intended should be in itself illegal, or even immoral, that it should affect the public at large, or that it should be accomplished by false pretences; and though it is agreed, that the gist of the offence is the union of persons, *it is impossible to*

conceive a combination as such to be illegal," Chitty, title conspiracy. "We can rest, therefore only on the *individual cases decided, which depend in general on particular circumstances, and which are not to be extended,*" 3d Chitty title consp. So much for the cases quoted by Chitty, upon this part of the question.

Let us now refer to the cases cited in 2 Massachusetts Rep. in support of the position, that a conspiracy against an individual (though the public at large be not concerned) is indictable, though it be to do a lawful act. 1st case, 8 mod. 320. This was a case of a conspiracy to marry a woman in order to gain her a settlement in a parish—is this an offence against an individual, or an attempt to burthen a large class of the community with the support of the woman as a pauper, and therefore a conspiracy of a public nature? 2d case, King vs. Journeymen Taylors of Cambridge, 8 mod. 11. that was a conspiracy to raise wages and of consequence a matter of concernment to the public at large; 3d case, King vs. Robinson, Leach Crown Law 38, a conspiracy to marry a woman in a false name for the purpose of raising a specious title to the estate of the person whose name was assumed; there an *abuse* of *courts of justice* was the *means* by which the object of the conspiracy was to be accomplished—all that the court decided was, that it was the province of the jury to collect from all the circumstances, whether there was not an intention to do a private injury to Mr. Holland, and that it was not necessary to prove any direct or immediate injury, or even to shew any specific overt act of conspiracy—there was no other point raised in the case. These cases, in themselves, certainly do not support the position taken in second Massachusetts Reports. In the argument of the case, 1 Hawkins, p. c. ch. 72, Poulterers' case, Rex vs. Edward, 8 mod. 321, 11 mod. 55; 3 Burr. 1320, 1 Lev. 125, 1 Keble 203, 1 Vent 304, 8 mod. 320 ibid. 8. 1 Ven. 183. 1 Salk 174, were all quoted to establish the doctrine, that a bare conspiracy to do a lawful act to an unlawful end is a crime, although no act be done in consequence thereof; but we think it manifest, that all these cases relate to conspiracy of a public nature—the case itself was a conspiracy to sell spurious Indigo to the public at large, and cannot be made to bear with force upon

a question as to the means used to effect a private cheat. The case in first Massachusetts Reports, was a conspiracy to obtain goods from a merchant by several persons, under pretences of opening a retail grocery store. This case was not argued, nor was there a motion in arrest of judgment, which the reporter *supposes* was abandoned by counsel from attending to the cases of Regina vs. M'Carthy, and King vs. Wheatly—both will be noticed hereafter—Case of Rex vs. Cape & al. 1st. Strange, 144, husband, wife, and servants, were indicted for a conspiracy to ruin the king's cardmakers by bribing his apprentices to put grease in the paste; objection in arrest of judgment that no more than one was present at a time when money was given, and the court overruled the objection—It was only a question of what was *evidence* of a conspiracy. The case of King vs. Edward, 1 Strange 707, indictment for conspiracy to marry a person settled in the parish of A. to a person settled in B. in order to bring a charge upon the parish of B. on demurrer, *judicium* pro defendante, because not an offence indictable, *directly in opposition to* 8 *mod.* 320. The case of the Journeymen Taylors of Cambridge was conspiracy to refuse to work under certain wages. The court rested upon the authority of the Tub Women's case, but that went upon the ground of diminishing the king's revenue.

We have examined every case we deem important in the parts of the case we have yet reached, which have been adduced by the prosecution, with the exception of Sir Francis Delavall's case, and Eccle's case. The charge against Sir Francis Delavall and others was, that they had conspired to remove a girl of eighteen, out of the hands of the defendant, Bates, a musician, to whom she was bound, to place her in the hands of Sir Francis, for the purpose of prostitution. Lord Mansfield places this case upon the ground of its being *contra bonos mores* offences against which are individually indictable—he quotes the case of a man, formally assigning his wife over to another, where there was a prosecution, being notoriously and grossly against public decency and good manners. He says, "It is true many cases of the *incontinent kind are appropriated to ecclesiastical courts;* but, if you except those appppropriated cases, this Court is the *custos morum*

of the people; Sir Charles Sedley and Curl were accordingly prosecuted here for offences against good manners." He says, also, "besides, there was a conspiracy"—but if that was of itself sufficient without regarding the purpose, why rely upon the ground of its being against public decency? This case was not argued. Eccle's case was a conspiracy to impoverish a Taylor by driving him away from his trade.—The conspiracy was indictable, not because of the injury aimed at the individual, it was because of the injury through him, as a Taylor, to the public; he would have been left to his civil remedy for the damage offered him as A. B.; the public could have no redress, but by a criminal prosecution for the injuries offered him as a Taylor. It was in restraint of trade, the community has an interest in every tradesman, and if they are suffered to be driven away, monopolies of a particular branch of trade, might be the consequence Such an attempt by single persons may be disregarded, but becomes dangerous on the score of public utility if attempted by numbers.

The last and most important branch of this subject depends upon the authorities relative to the doctrine of cheats. East, in his treaties of the pleas of the crown, says, that "it is not every species of fraud or dishonesty *in transactions between individuals*, which is the subject matter of a criminal charge at common law, but it must be such as affects the public; such as is public in its nature—calculated to defraud numbers—to deceive the people in general." 2 vol. 817. Instead of Hawkins's definition of a cheat, heretofore stated, East declares, that he should rather say, "it consisted in the fraudulent *obtaining* the property of another, by any deceitful and illegal practice or token, (short of felony,) which affects or may affect the public."—But the offence is now enlarged by the statutes 33 H. 8. and 30th, Geo. 2d Neither of which statutes, according to the report made by chancellor Kilty, of the British statutes, is in force here; so that the offence remains as at common law. In addition, says East 823 to those abovementioned, there are also instances to be found in the books of Cheats, in their nature private, which have yet been adjudged to be indictable at common law, but, upon examination they will either appear to be founded in *conspiracy* or *forgery*.

er, as in some of the instances before put, to implicate considerations of public justice, public trade, or public policy," *they are subsequent to that of 33 Hen. 8, but prior to that of* 30, Geo. 2." Thus it is said by Hawkins, that the suppression of a will is indictable as a cheat, for which he cites Noy. 103. but as there were several persons convicted on the information filed against them by the Attorney General, it is probable they were charged with a conspiracy or combination. The same may be said of Skirrett and others who were indicted for causing an illiteral person to execute a deed to his prejudice, by reading it over to him in different words from those in which it was written. So of Orbell's case, who was convicted upon a charge of having run a foot race fraudulently, and with a view to cheat a third person, by a previous understanding with the competitor to win. Hawkins instances all the above cases as *individually* indictable, independently of any combination; but East says, it is *probable* they were on that ground, and for Orbell's case refers to 6 mod. 42; and there the words "per conspirationem" appeared, but in 12 mod. 459, cited King vs. Orbeville, no such words appear, although it seems to be the same case, notwithstanding 6 m. 42, calls it Queen vs. Orbell, and 12 mod. calls it King vs Orbeville —No reliance can be placed on these cases, except to shew the inaccuracy of Hawkins; nor upon the case of Regina vs. M'Carty, and Fordenborough, which, East says, was a case of doubt and difficulty. Mr. J. Denison, in Blackstone's report of Wheatly's case, says, "it was quashed for want of false token;" and in Burrows's report, that "it *was* a case of false token;" see 2, East 824, so that Wheatly's case is the only one wherein any principle can be taken hold of upon the question of private cheats effected by a conspiracy; and this is the case mainly relied on by the prosecution. We shall examine Lord Mansfield's opinion, he being the only judge who delivers a "dictum" about conspiracy. Mr. Justice Denison having been made to speak differently, in different reporters, as to M'Carty's case. As to Tremaines Placita Coronæ, it cannot be considered as authority in cases of cheat, they were in the time of Charles 2d, and if they had been authority, there would be no occasion for the statute of 30, Geo. 2d—his conspiracy cases have no bearing upon cheats; and, al-

though many of his cheat cases may rest upon a combination, there are many against a single person, which for the want of a *false token, under* 33, *Henry* 8th, or of false pretences under the statute 30, Geo. 2, would be now over-ruled, viz: Rex vs. Wilcox, Rex vs. Baker, Rex vs. Alibere, Rex vs. Wansbrough, Rex vs. Chamberlaine, Rex vs. Bonny.

Rex vs. Wheatly, was a motion in arrest of judgment upon an indictment against Wheatly, for fraudulently selling sixteen gallons of a *liquor called Amber, for, and as, eighteen gallons*, to one Richard Webb; the judgment was arrested. This was not an indictment for a conspiracy, but against an individual for a cheat; and, it is upon what Lord Mansfield *unnecessarily said*, (and which may have been, therefore, called a dictum, for his reasons without it were certainly more applicable, and indisputably sufficient to support his opinion,) *that the doctrine now urged* can only be sustained. Lord Mansfield, after stating the case and some preliminary matter, says, "that the fact here charged should not be considered as an indictable offence, but left to a civil remedy by an action, is reasonable and right in the nature of the thing; because it is only an inconvenience and injury to a private person, arising from that private person's own negligence and carelessness, in not measuring the liquor.—The offence that is indictable must be such a one *as affects the public;* as, if a man uses false weights and measures and sells by them to *all* or *many* of his customers, or *uses them in the general course of his* dealing. So if a man defrauds under false tokens—for these are deceptions that common care and prudence cannot guard against—*so if there be a conspiracy to cheat*, for ordinary care and caution is no guard against this. Those cases are much more than mere private injuries, they are public offences. But here it is a mere private imposition, &c."

It is to be observed that this was an indictment at common law for a *public*, not a private cheat; an offence against trade—as all cheats at common law, as we shall hereafter attempt to demonstrate, were considered. The false tokens, spoken of by Lord Mansfield, were therefore public false tokens, as false weights and measures, not the privy false tokens of H. 8. as a ring, a seal, a colonel's gorget, or a forged letter. The offence could not have

been committed through the instrumentality of the latter; 16 gallons of amber could only have been sold for 18 by a public false token, a false weight or measure, not by a privy false token; the former, betoken a general design to defraud *all* or *many* of his customers, and by which the public in general may be imposed upon without any imputation of folly or negligence. So of a conspiracy; it is an offence against the public at large; and when Lord Mansfield spoke of a conspiracy, he could not have had any reference to a private cheat. "What (says Justice Denison) is it to the public whether Richard Webb has or has not his 18 gallons of amber?" But let there be, (as this court says,) a public false token, or a conspiracy which common care and prudence might not well guard against, and it becomes a matter of public concernment. Attempt to substitute a conspiracy for a privy false token and what becomes of all the doctrine of unexecuted conspiracies? That no overt act need be done,—that a conspiracy, need not be proved, but may be inferred, and that from two persons having done the same thing, though at different times, they may be presumed to have combined. A, is indicted for a cheat, and has used no false token to effect it, but a conspiracy is set up as a substitute, and if it should be offered in evidence, that B attempted the same fraud, and that it therefore, might be inferred that there was a combination between A and B, would any court in Maryland suffer such evidence to go to the Jury? might not one man be convicted upon the acts of another, to whom he might be an entire stranger, and himself perfectly innocent of any design whatever? Where is there, in the whole range of authorities, a case of an individual being indicted for a cheat *qua cheat*, and a conspiracy being given in evidence? What had Lord Mansfield to do in the case of Wheatly, with private or privy false tokens? It was a case of a public cheat, and to public false tokens he could only pertinently allude. Suppose the statute of Henry 8th, had never passed, every word of his opinion would have reference to the case before him, and we should never have heard of a conspiracy being substituted to create the offence of private cheats. East 823, expressly says, the cases of *private cheats effected* by conspiracy *or forgery are all subsequent to* 33 *Henry* 8th. We consider this as bearing with peculiar emphasis

on the case at bar, as from it is strongly to be implied, that if the statute never had been passed, there could have been no private cheats effected by a conspiracy. The people of Maryland are presisely in the same predicament, as if it never had been enacted—for, neither 33 Henry 8th, nor 30, George 2, is in force here, as declared by Chancellor Kilty under the authority of the legislature of this state.

No cheats but those of a public nature are known to our laws. The people of England, lived till 33 of Henry 8, before frauds effected by private false tokens were indictable; and from that period until 30th of George 2d, before frauds effected by false pretences were indictable. The courts of England never dared judicially legislate far enough to lay hold of such offences, though their frequency was grievous, and at last called, importunately for parliamentary interference. The courts could not get along with this strange doctrine of conspiracy, without suffering the desultory, vagrant, and ubiquarian dicta, in relation to it, to be foisted into and invade all, and every department of criminal law, applicable to private offences; and that for no better reason, than that it properly belongs to none.

The question before the court is, simply, whether or not, the acts charged, amount to an indictable conspiracy at common law; and whether they would or not constitute a cheat, is not involved in the enquiry, further than it concerns the position, that a conspiracy makes an act a cheat, which, for the want of a false token, would not be a cheat; unless it is in reference to the doctrine, that a conspiracy to injure only an individual is not indictable, except when the act meditated would be indictable, if actually committed by an individual. The present is not an indictment for a cheat, the acts charged would not be individually indictable as such; but it is said, that being affected by a conspiracy, they thereby became indictable as cheats. The case relied upon chiefly, is Wheatly's case above referred to; that was not the case of a conspiracy; an individual was indicted for selling 16 gallons of amber for 18 gallons, and the court said, there must be either a false token or a conspiracy, but they did not say, that on an indictment for a cheat, a conspiracy could be given in evidence to make out the offence, nor can there be such a case

produced; it would be contrary to every principle of criminal jurisprudence, that one distinct offence known to the laws of the land, could be made use of in a prosecution for another; if it could, why not, on an indictment for a cheat, give in evidence a conspiracy to steal, as a substitute for a false token? For in case 2 Barnwall and Anderson, (presently to be noticed,) it is said, in an indictment for a conspiracy the means to be used to commit an offence which establishes what criminal character an act assumes whether it be cheat, larceny, or robbery? It is also said, in that case that it is quite sufficient to charge the defendant with an *illegal* conspiracy, which is, of itself, an indictable offence; so that, take the doctrine of conspiracy altogether, as it has been argued to be, and if from the act of A. and B.; no matter whether committed in the presence of each other, or at different times, it can be inferred that they meant to get possession of the money or goods of C. A. and B. may be indicted for a conspiracy, which, it has been urged, need not be proved, but may be inferred from circumstances; and, if it can be shewn, that they ever intended to get C's money or goods, whether by means that would amount to cheat, robbery, larceny, simple fraud, or civil trespass, they are indictable for a conspiracy, though they only intended to use such means; for it also is insisted, that a conspiracy is a complete offence, though nothing be done in execution of it, provided it be an *illegal* conspiracy. But, whether it be an *illegal* conspiracy, must surely depend upon the means used, and the object aimed at; and yet it is said, that the means are immaterial. From which reasoning, it follows, that if A and B be indicted for a conspiracy to *rob* C, evidence may be given of an intention to commit acts which would only amount to *larceny*. Let it be supposed, upon an indictment for a cheat, that, for the want of a false token, a bare conspiracy to get money of another, without any thing being done in execution of it, should be offered in evidence, could the indictment be thus supported? The answer can hardly be in the affirmative. What then becomes of the doctrine of unexecuted conspiracies, when applied to private frauds? The defendants say, a conspiracy against an individual, is not an indictable crime, where the public is no way concerned, unless the act, if actually committed by an individual, be indictable. If the defendants had committed a cheat, why were they not indict-

ed for a cheat? The answer is obvious: there were no false tokens to make it so, and, (independantly of statute 33, Henry 8; making frauds by privy false tokens, criminal, which is not in force in this country,) the acts charged to them *could not* constitute a cheat, because they were not of a nature to be effected by public false tokens, as false weights and measures. Otherwise relying, as the counsel for the prosecution profess to do, upon Lord Mansfield's opinion in Wheatly's case, why were not the traversers indicted for cheats, and the conspiracy offered in evidence? Aware of the difficulties presented by that course, an indictment for a conspiracy is preferred, and with consummate subtlety, if not sophistry, they adapt the very authority, (on which they did not sufficiently confide to follow the course it intimated) to the purpose of making a cheat out of the conspiracy and a conspiracy out of the cheat. If says the argument, in order to constitute the crime of conspiracy, the act designed must, itself, be criminal—here is such an offence, because it was to be effected by a conspiracy. But where is the conspiracy? The answer is, it is a conspiracy, because the act is indictable, by reason of the conspiracy to commit it. To our apprehension, this is inferring the premises from the conclusion, and the conclusion from the premises. It is a conspiracy, because it is a cheat, and it is a cheat because it is a conspiracy. A conspiracy to cheat is criminal, because a cheat is indictable, and a cheat is indictable, because a conspiracy is, and, therefore, a cheat effected by conspiracy, is indictable. From deductions founded upon such reasoning, the court do not think it warrantable to introduce new offences into the criminal code.

Conspiracy is a distinct substantive offence, and is as different from a cheat as it is from larceny or robbery, and we conceive much of the difficulty arises from considering it as a component *of other indictable acts, and of mingling* the constituent parts of a crime at common law, with those of private cheats, created by statute. If two men should agree, *in so many words, to cheat* another of his money, they conspire to do a criminal act, because the law would presume, that they did not mean to stop short of the means necessary to effect a *cheat;* and the particular false token need not be set out, because, the conspiracy is the gist, and

nothing need be done in execution of it. But if A and B agree to get possession of the money or goods of C. the law would not, instanter, infer, that they intended a cheat, because it might be their object to obtain it on loan; and, although they might know themselves to be insolvent, yet the law, for the purpose of converting the private fraud into an indictable cheat, would not suffer the conspiracy to be substituted for a privy false token. So, if two conspire to commit a burglary. the offence is complete, and the particular means need not be set out, although it might depend upon them whether it was a burglary or a larceny. And this is all that the Court decided in the year 1818, in the case of the king vs. Hill and Henry, reported by Barnwall and Alderson. That was a conspiracy to commit an offence which, if individually committed, would be indictable; to cheat by false pretences is an act made indictable by 30, George 2—but that statute *is not in force in this country.* The Court said, that the conspiracy was the gist of the offence, and so it was, for they were indicted for conspiring together by divers false pretences, and subtle means, to obtain from him large sums of money, and to cheat and defraud him thereof; and all the court said was, that the specific pretence need not be set out, because the conspiring was the gist of the offence, and the means were matter of evidence. But did they say, that if the the statute had never passed, (and it is not here in force) that on an indictment for a conspiracy to cheat, such false pretences as the statute speaks of, could be given in evidence, in lieu of the privy false token of 33, Henry 8th, or the public false tokens required at common law; or, that in an indictment under the statute 30, George 2d, a conspiracy could be given in evidence, according as the prosecution would interpret Lord Mansfield to mean in the case of Wheatly? The crime of conspiracy cannot be confounded with the characteristics of private frauds, for the purposes of making them indictable crimes, nor can private frauds be blended with conspiracies, for the same end.

Conspiracies are offences against the public at large, and a peculiar punishment is inflicted upon them far exceeding, in severity, any known to our code, with the exception of murder in the first degree. The law will not thus signally punish injuries

to individuals affected by conspiracy, unless through them the blow is to be felt by the community. It provides for an individual a civil remedy. For, what interest can the community have in the safety of a single individual, thus to protect him against the combination of others, though nothing be done in execution of their designs? Is it not more reasonable to ascribe the punishment it inflicts for a combination to impoverish a Taylor by indirect means in driving him from his settlement, to the interest of the public at large, and that anxious care which pervades every part of the English law for the protection of all branches of trade, than to any respect it pays to the rights of an individual? The community cannot be indemnified by evil actions, and therefore in order to reach the offender, the law makes use of the injury done the individual as the medium of punishment. Blackstone, whose mind was so signally distinguished for that rare union of precision and expansion, which at once embraces, divides, assorts and defines all subjects presented to it, knew nothing of the offence of conspiracy against individuals, as contemplated by these indictments—but, by his methodical and discriminating arrangement, some light may be collected from the class in which he ranks cheats, as he divides offences into classes. He does not class cheats as offences against the king's prerogative: he does not class them as offences against the king and government; nor among "offences against public justice," as, receiving stolen goods; barratry maintenance; champerty; compounding informations; conspiracy; falsely to indict; threatening to accuse of a crime punishable infamously, with a view of extorting money; perjury; bribery; extortion &c.—he does not class them in his chapter of offences against public peace, nor against public health, police or economy, as bigamy, nuisances, and gambling. It is not in his chapter of offences against private property, as larceny, robbery, malicious mischief, theft, forgery; but he classes them conspicuously among offences against *public trade*. After speaking of smuggling, usury, forestalling, regrating, engrossing and monopolies, under the head of which comes the offence of artificers combining to raise the rate of labour, by virtue of statute 2, Ed. VI. he says, cheating is *another offence* more immediately against public trade; thus considering with

Chitty and East, cheats at common law, as offences against the *public at large*, and of course very little of British authority can be applicable to them here. The decisions since the statute of the 33d, Henry 8, having essentially changed the rules applicable to cheats. Let the offence of cheat be considered as an offence exclusively against public trade, and, perhaps on that ground, a conspiracy to commit a cheat might be supposed to be indictable; but the doctrine cannot be applied to private frauds without maintaining principles either too old, not to have been before practised under, if considered applicable to this country, or too novel now to be received. The court considers the principles upon which these indictments are attempted to be sustained, not *sufficiently intelligible*, and that it is its duty to protect the people of Maryland within their jurisdiction, from punishment for any act, which it is not *perfectly satisfied* is forbidden by the laws.

One case remains to be noticed.—The King vs. Turner, 13 East 228, is, we think, conclusive upon the subject of conspiracies, where mere private civil injuries only were to be effected by them, and in which the public had no concern. It was decided as late as the year 1811 by Lord Ellenborough—and was an indictment for a conspiracy to commit a civil trespass upon property, by going into a preserve for hares for the purpose of snaring them—the act was committed in the night by the defendants, armed with offensive weapons, for the purpose of opposing resistance to any endeavours to apprehend or obstruct them; they were found guilty, but, upon motion in arrest of judgment, they were discharged. Gold endeavoured to sustain the rule upon the authority of Hawkins 2 P. C.—Gleed now opposed the rule, and endeavoured to sustain the indictment upon the authority of 2 Hawk. P. C. c 72 s 2, where it is said "that all confederacies whatsoever, wrongfully to prejudice a third person, are highly criminal at common law, as where several confederate to maintain one another in any matter, whether it be true or false." The cases all shew that it is equally an *offence to combine to do a* lawful act by unlawful means, or to an unlawful end, as to do an act in itself unlawful; as in the instance of workmen conspiring together to raise their wages, as in the case of the King vs. the

Journeymen Taylors of Cambridge, 8 mod. 11—or, parish officers conspiring to marry a helpless pauper into another parish to settle her there, and rid themselves of her maintenance, as the case of Rex vs. Edwards and others, 8 mo. 320; and in all cases of unlawful conspiracy, the mere unlawful agreement to do the act, though it be not afterwards executed, constitutes the offence, according to Rex. vs. Armstrong and others, 1 ventr. 304, and Rex vs. Respal, 3 Burr 1220 and Blac. rep. 568. In this latter case, the indictment for conspiracy to charge a man with a false fact, and exacting money from him, under pretence of stifling the charge, was sustained, though the fact imputed, which was merely that of taking hair out of a bag belonging to the defendant, Respal, did not import, in itself, to be any offence. Lord Ellenborough said, "All the cases, in conspiracy, proceed upon the ground, that the object of the combination is to be effected by some falsity—insomuch that in Taylor and Towlins's case in Godb. 444, it was held necessary in conspiracy, to allege the matter to be *false et malitiose*. By the old law, indeed, the offence was considered to consist in imposing, by combination, a false crime upon a person. But are you prepared to shew, that two unqualified persons going out together, by agreement, to sport, is a public offence? Modern cases have carried the offence further than some of the old authorities; such as the king vs. Eccles, and others, where the defendants were convicted upon a charge of conspiring together, by indirect means, (not stating what those means were) to prevent a person from carrying on his trade; and in the King vs. Spragge and others, 2 Burr 995, which charged the defendants with a conspiracy to indict and prosecute W. G. for a crime, liable, by law, to be capitally punished; and, that in pursuance of such conspiracy, they did afterwards indict him—one of the objections was, that the charge was only a conspiracy to indict falsely, but it was overruled. Lord Ellenborough, C. J. "that was a conspiracy to indict another of a capital crime which, no doubt, is an offence," and the case of the King vs Eccles and others, was considered as a conspiracy in restraint of trade, and so far a conspiracy to do an unlawful act affecting the public. But I should be very sorry, that the cases in conspiracy against individuals, which have gone far enough, should be

pushed still further. I should be very sorry to have it doubted, whether persons agreeing to go and sport upon another's ground, in other words, to commit a civil trespass, should be thereby in peril of an indictment for an offence which would subject them to infamous punishment."

Here Lord Ellenborough said, he should be sorry, that the cases of conspiracy against individuals, which have gone *far enough*, should be pushed still farther—but, say the counsel for the prosecution, he does not say that they had been pushed too far. The Court, however, think, it must be implied, that the learned Judge meant to say, that although he would not stop short of the length to which the doctrine had been actually carried; yet, that it had never gone so far as in the case before him, *and the one now at bar*. It is to be observed; that the same principles and the same authorities were set up in both cases; the subject was fully laid open and presented to him in the same point of view as it has been to this court; and, it is manifest, that Lord Ellenborough decided upon the principle, that conspiracies to commit mere civil injuries, where no matter of public import was to be effected, were not the more indictable for being connected with a conspiracy, than if perpetrated singly. This was a nocturnal trespass, and attended with such aggravated circumstances, as ought to render it an indictable crime, if individually committed; yet the law does not so treat such private injuries, and Lord Ellenborough did not consider, that their being attended by a conspiracy, could convert mere private civil injuries into indictable crimes. It is upon the same ground that this court decides; they conceive that the doctrine of conspiracy has been carried far enough, and that it ought to be carried no farther. They consider the authority of equal weight with any that has been produced on the part of the prosecution; and, that it has more resemblance and analogy to the case before the court, than any other that has been adduced.

Upon the whole, the court considers the doctrine of conspiracy as urged in support of the indictments, too complex to be now adopted here, as the rule of criminal law; that, if the dicta of judges, and bare precedents of indictments, which do not appear to have been questioned, argued, or settled by decisions,

are to be regarded as conclusive upon the Court, such authorities are as numerous in support of the most extravagant positions as of any part of the doctrine; and that consequently, the Court are not at liberty to reject one part and recognize another; that the branches of the doctrine cannot be detached from each other—that the whole must be taken together, and that, if the rule conceived by this court, before stated, be the true one, a definite and rational limit is established; if otherwise, the doctrine is illimitable and undefinable.—Thus impressed, the court considers it their duty to protect the community against the establishment of principles contrary to all those by which it has been heretofore legally regulated; and which would subject every individual in society, not to the law, but to the will of the judges, purely arbitrary, because governed by rules to be applied in making out the nature of an offence, not as intelligible prohibitions, before the commission of an act, but as *expost facto* definitions of crime after the act has been perpetrated. The court considers the punishment of bare intention to commit crime, contrary to all received opinions of criminal law, and never attempted but in cases of treason, in which, construction has been made by English Judges, at no very remote period, the instrument of absolute monarchical power; and that, if a conspiracy need not be proved, but may be inferred—that is to say, if acts individually innocent, may be made criminal, because it might be deduced from two persons doing the same thing, that they had previously agreed to do it, however remote from each other, oppression may be legalized to any extent; and in times of great public excitement and delusion, with a Jeffries on the bench, and a jury selected from the mass of the people, the doctrine might be wrought into an engine of the most cruel and bitter persecution.

C. W. HANSON,
WM. H. WARD.*

*This opinion was never filed in Court; but as it was soon afterwards published with the names of the associate judges, there can be no doubt of its accuracy.

APPENDIX.

No. II.

Opinion of Judge Dorsey, on the demurrer.

The question raised by the demurrer, is this, Do the facts charged in the indictment constitute an offence against the laws of Maryland? That such is their legal effect, I have no doubt: Hawkins in his Pleas of the Crown, vol. 1, p. 348, says, "There can be no doubt, but that all confederacies wrongfully to prejudice a third person, are highly criminal at common law." The opinions of this writer, upon the subject of criminal law, have always been considered as entitled to the highest respect and consideration, for his researches were great, his discrimination accurate, and his legal learning profound: and it will be found on investigation, that his position is fully established, by the authority of adjudged cases. In Timberly and Cauld Siderfin 6, (adjudged 14th, Charles 2d.) the reporter states, "that the defendants conspired to charge one with being the father of a bastard child, with intent to procure money from the party accused," and on motion to quash the indictment, it was urged, that the offence was merely spiritual; but the Court said, that "the indictment was good, for although fornication was a spiritual offence, this Court has cognizance of every illegal thing by which damages may come to the party as here they may; for by this he may be liable to the maintenance of the child."

1st Keeble 203, Child against North and Timberly, (13th, Charles 2d,) "Lindley moved to quash an indictment of conspiracy to charge H. with having carnal knowledge of a woman, and did so, and that the child she went with was H's, which he said, was matter not within the cognizance of the Court; but per curiem. This is likely to be a loss and charge to H., and, therefore, the indictment is well laid;" and by Foster, it is no ground that because the Court have no "cognizance of the principle, they cannot punish the conspiracy." In 1st Keeble 254, the same case under the name of King against Timberly, was brought before the Court on a motion in arrest of judgment "Bernett moved in arrest of judgment. for that the matter of the indictment, it being to deprive the plaintiff of his credit, and to extort several sums of money from him, but said not that they conspired to cheat the plaintiff," (prosecutor must have been intended) "before any that had jurisdiction. Windham. The crime is the conspiracy, which, whether it be only to defame or disgrace men; or had it been to charge him with heresie, it had been punishable at common law, though no prosecution be had thereon. And by Twisden, this is a conspiracy for lucre and gain, to charge and disgrace one with a bastard, which is well actionable. And by Foster, the very act of conspiracy is so odious for the ill consequences, that it cannot have a good intent. Judgment for the Queen."

King against Armstrong, Harrison and others, 1 Ventris, 304, (28th and 29th, Charles 2d.) defendants were indicted for conspiring to charge "H. with keeping a bastard child, and thereby to bring him to disgrace. It was objected in arrest of judgment, that the bare conspiracy without executing it by some overt act, was not the subject of an indictment. It did not appear that he was actually charged with keeping a bastard child; nay, 'tis alledged, that it was but a pretended child, neither was he by warrant brought before a justice of the peace upon such account; but only that they went and affirmed it to the party himself, intending to obtain money from him, that it might not be further disclosed sid non allicatur; for there is as much an overt act, as the nature and design of this conspiracy did admit, in regard there was no child, but only a contrivance to de-

fame the person and cheat him of his money, which was a crime of a very very heinous nature: Judgment was entered up against them, and Armstrong who appeared to be the principal offender, was fined 50*l*., and the others 30*l*."

King against Best and others, 2 Lord Raymond 1167, (4th Anne) defendant was indicted with three others, for that they being idle, scandalous, and wicked persons, in order to defraud one P. P. of his money and destroy his reputation, did conspire falsely, to charge him with being the father of a bastard child, with whom they pretended one Elizabeth Carter, then to be ensient, and that in pursuance thereof, they did falsely, for the sake of wicked gain in the hearing of many of the subjects of the Queen, accuse the said P. P. with being the father of the said child. to the great loss, scandal, and defamation of the said P. P. &c. &c. The indictment was excepted to, on the ground, that it was defective in not stating, "that the child was likely to become chargeable to the Parish; for unless the prosecutor, by the accusation, was likely to be subjected to some penalty, the indictment would not lie—The indictment is nothing, but that the defendants conspired to tell the prosecutor, that he was the father of the child Elizabeth Carter, was ensient with." The Court gave judgment for the Queen; "for they said the defendants were charged at least, with a conspiracy, to charge the prosecutor with fornication, and though this was a spiritual defamation, yet the conspiring to do it, was a temporal offence and indictable, and the conspiracy was the gist of the offence, and the Chief Justice said, that confederacies was one of the articles of the commission."

And in Tremaine's Pleas of the Crown, p. 83, King against Turner and others, (26th, Charles 2d.) will be found the precedent of an indictment, whereby the defendants are charged with conspiring for the purpose of extorting money from one George Green, to accuse the said Green of having had an adulterous intercourse with Elizabeth Turner, the wife of one of the defendants, and with being the reputed father of one of the children of said Elizabeth. It was contended by the defendant's counsel in the case now before the court, that those conspiracies were indictable, not because their object was to defame and defraud,

but, because the conspirators meditated the abuse of judicial power, as a means of accomplishing their views; that it fell within their design, falsely to accuse the prosecutor before a tribunal having cognizance of the offence. Although I am ready to admit, that a conspiracy to pervert the course of justice is a crime of the most reprehensible nature; yet, I am not prepared to concede the point, that the cases above alluded to, were decided on any such principle. The Judges place their decisions, expressly on the ground of a conspiracy to defame, cheat, and defraud the prosecutor. If the Judges who decided those cases, have declared that the gist of the offence consisted in the conspiracy to defame or defraud, on what correct principle can this Court place their decisions on distinct and different grounds, by saying, that the meditated abuse of judicial power, was necessary to give a criminal character to the conspiracy? The exercise of such a latitude of construction, if indulged to any extent, would break up the foundations of the Common Law. Where are we to look for the principles of that law, but in the reasons given by the Judges for their decision? Remove those reasons, and substitute others, ad libitum in their place, and what certainty have you? What principle can be considered as established, if we set at naught, the experience and learning of our predecessors? The administration of justice would be as inconstant as our feelings; and that great system, which has heretofore been denominated the Common Law, would no longer be worthy of the name; it would be a thing of yesterday; of to-day—our bane, and not our birth-right.

But, if the principle of removing decisions from the grounds, on which the Judges had placed them, was admissible or correct, it could not avail the defendants here, because the cases do not shew that the conspirators intended to resort to false judicial accusation, as the instrument of effecting their criminal designs. They state only a conspiracy, to accuse or charge the prosecutor with being the father of an illegitimate child; not a conspiracy to charge him before those, who had judicial pswer, to take cognizance of the supposed offence; and it cannot, correctly be contended, that a conspiracy to charge a man with an act, necessarily amounts to a conspiracy to accuse him judicially with having

committed that act; because, the charge may be made to the individual alone, for the purpose of extorting money from him, without any design on the part of the conspirators of resorting to a judicial accusation to be supported by perjury; and such appears to be the case of Armstrong and others, reported in Ventris, where an attempt was made to arrest the judgment, on the ground, that the indictment was insufficient, inasmuch as it did not state that the party accused, was carried before a justice of the peace, but only averred that the conspirators "went to him, and affirmed the charge, with intent to obtain money from him, that it might not be further disclosed." And here it must be remarked, that the precedent cited from Tremaine; King against Turner and others, and the indictment against Best and others, (which is set out at full length in 2d Lord Raymond 1167,) do not charge the conspirators with a design to effect the object of their conspiracy, by accusing the prosecutor with the supposed offence before those who could take judicial cognizance of it. As the indictments did not charge the defendants with conspiring to accuse the prosecutor, before a magistrate or others, having judicial cognizance of the matter of bastardy, how could the Courts who adjudged those cases, or how can other Courts *infer that fact, and make it alone, the foundation of guilt?* I have always been taught to believe, that an indictment must contain a legal charge of guilt, and that it cannot be helped by inference, intendment, or presumption of fact. Before we can decide, that the above cases are only to be supported on the ground, that the conspirators contemplated the abuse of judicial authority, we must be prepared to say, that we are authorized to presume the fact, that they did contemplate such an abuse, and if we are at liberty to presume that fact, we are equally at liberty in every other case to presume any fact whatever; and by this new and singular process of presuming, we may make any decision suit all cases, or none: and thus the assurance, "that the law is uncertain, will become doubly sure." But, even supposing that the foregoing cases could be correctly referred to the principle, that the conspiracies therein charged, involved the contemplated abuse of judicial power, still it would not follow, that a conspiracy to defraud or defame by other false means

would not be criminal. The object of the conspirators would be the same in either case, and the means, though varying in their nature and degree of criminality, would be equally false in both cases.

Let us proceed to examine other authorities on this subject. In Tremaine's Pleas of the Crown, p. 86, King against Record and others, (27th Charles 2d.) will be found an information against three persons, for a conspiracy to cheat the prosecutor. "The conspirators, falsely and fraudulently affirmed to the prosecutor, that one of them, to wit: Charles Record could buy an office of Colonel in the states of Holland, of the value of eight hundred pounds a year, from one Wayne, and did falsely pretend, that if the prosecutor would pay 1,000*l.* for acquiring the said office and place of Colonel aforesaid, for the said Record during his natural life, the prosecutor should receive the sum of two hundred pounds by the year, during the natural life of the said Record; and if the said Record in the office or place aforesaid, should die or be removed, that then the said prosecutor should have 160*l.* by the year, for the space of five years, after the death or removal of the said Record, and that the conspirators did falsely, fraudulently, and deceitfully affirm to the prosecutor, that a pleasant house fit for the habitation of the said Record, nigh to the Hague, in Holland, with orchards and gardens of the value of five hundred pounds by the year, could be purchased for eight hundred pounds, and that the said conspirators did deceitfully and unlawfully incite said prosecutor to pay into the hands of the said Record the sum of 400*l.* towards the buying of the said house, (the said conspirators affirming to the said prosecutor, that she should have the said house and garden in mortgage to her, as a security for the said sum.") The information then proceeds to state, that the conspirators in pursuance of their wicked conspiracies and practices, did unlawfully, fraudulently, and deceitfully receive of the prosecutor several large sums of money.

The King against Alibone, Tremaine's Pleas of the Crown, p. 97, (1st of James 2d.) An information was filed against the defendant, charging, that he and others did conspire to cheat and defraud one Thomas Hilliard, by receiving from him certain

bonds for the payment of money, as a consideration for procuring a marriage between him and a woman, whom they falsely and fraudulently represented to be rich, when in fact she was poor and indigent.

In the same book, (the King against Taydler and others, p 96,) is contained an information, filed in the reign of Charles 2d, against six persons, for that they devising, practising, and falsely, unlawfully, and deceitfully intending one Gertrude Crowgy widow, and Gertrude Crowgy her daughter, to deceive and defraud, did draw a conveyance to themselves of some leasehold estates, belonging to the said women, and did persuade them to execute it, pretending it was in trust only for them, whereas it was an absolute conveyance to two of the conspirators. In p. 92 of the same book, will be found the precedent of an information filed against Wilcocks and others, charging, "that they being persons of dishonest conversation, and compassing, and daily devising how, by unlawful means they might obtain and acquire into their hands and possession the goods of others, in the 31st year of the reign of Charles 2d, under colour and pretence of buying from one John Dutton 650 yards of cloth, did the said piece of cloth, out of the hands and custody of the said John, into their hands and possession, falsely and unlawfully, fraudulently and deceitfully, obtain and acquire, and the said John Dutton did then and there falsely, unlawfully, fraudulently and deceitfully deceive and defraud." Tremaine's Pleas of the Crown, has always been considered by the profession as an excellent collection; and Wentworth, in the preface to the 6th volume of his System of Pleading, says, that it is the best arranged, and the most useful book of precedents of Crown law now extant.

Roy vs. Skerrett and others, 1 Sidf. 312, S. and others were indicted for reading a release to an illiterate person, in other words than those in which it was written, by which he was induced to seal it; a motion was made to quash the indictment, "first, because there was no county mentioned, except in the margin, secondly," because "the indictment did not state the date of the release," and thirdly, "because it did not state, that each of them read the release;" but the court overruled all the exceptions and ordered the defendants to plead.

The Queen against M'Carty and Fordenborough, 2d, Lord Raymond 1179. The indictment charged, that the defendants falsely and deceitfully intending to defraud Thomas Chowne of divers goods, together deceitfully bargained to barter, sell, and exchange a certain quantity of pretended wine, as good and true new Portugal wine, of him, the said Fordenborough, for a certain quantity of hats, of the said Thomas Chowne; and upon such bartering, the said M'Carty pretended to be a broker of London, when in fact he was not, and the said Fordenborough pretended to be a merchant of London, and to trade in Portugal wine, when in fact he was no such merchant, nor traded in such wines, and that the said Thomas Chowne giving credit to the said fictitious assumptions, personating and deceit, did barter and sell to the said Fordenborough, and did deliver to the said M'Carty, as the broker between the said Chowne and Fordenborough, for the use of the latter, a certain quantity of hats of such a value, for so many hogsheads of the pretended new Portugal wine.

Although the indictment in the case did not charge the defendants in words, with a conspiracy, yet as it charged them with a conjunctive act, (that they together committed the offence imputed to them,) it must be considered as a prosecution for a conspiracy, and it appears by East's Crown Law, p. 824, that judgment was given for the Queen in Mich. 4th Anne.

The Queen against Obell, 6. Modern. Indictment "for fraudulently per conspirationem to cheat, J. S. of his money, got him to lay a certain sum of money upon a foot-race, and prevailed with the party to run booty, and the court would not quash it, upon motion, for they said, that being a cheat though it was private in the particular, yet was public in its consequences."

It will be remembered, that in the preceding cases, the meditated frauds were levelled against particular individuals, and that the acts conspired to be done, would not have been indictable cheats, if they had been effected by one, without the aid of conspiracy, and why? because, there were no false tokens which were necessary at common law to make a cheat accomplished by one individual an indictable offence. There were no privy tokens or false letters as required by the statue of Henry 8th, chap. 33; and the statute of 30th, George 2d, chap. 24, which declares,

that "all persons who knowingly and designedly by false pretence or pretences, shall obtain from any person or persons, money, goods, wares or merchandize, with intent to cheat or defraud any person or persons of the same, shall be deemed offenders against law and public peace," passed long since those cases were adjudged. Those authorities do therefore, in my opinion fully establish the position, that where persons falsely and deceitfully confederate to cheat another, they are guilty of an indictable offence; although, such cheat, if effected by one without the aid or concurence of others, would not have been the subject of a criminal prosecution.

But there are other decisions.

King against Edwards and others, 8 Mod. (11 Geo. 1st.) The defendants were indicted, "for that they per conspirationem (inter eos habitam) gave the husband money to marry a poor helpless woman who was an inhabitant in the parish of B. and incapable of marriage, on purpose to gain a settlement for her in the parish of A. where the man was settled. And now, it was moved to quash the indictment, because it was no crime to marry a woman and give her a portion, per curiam. A bare conspiracy to do an unlawful act, to an unlawful end, is a crime, though no act was done in consequence thereof. Suppose there is a conspiracy to let lands of 10*l.* per annum value to a poor woman in order to get her a settlement, or to make a certificate-man a parish officer, or a conspiracy to send a woman big with a bastard child into another parish to be delivered there, and so to charge that parish with the child, certainly these are crimes indictable."

Under the poor laws of England, the respective parishes, are bound to support their own poor, and the wife gains a settlement in the parish where the husband is legally settled. This was a conspiracy, therefore, to defraud the inhabitants of the parish of A. by imposing on them, the maintenance of a woman belonging to a different parish. The conspirators meditated a private wrong, a fraud on the inhabitants of a parish, not a fraud on the community at large, the abuse of judicial power formed no ingredient in the conspiracy, and the statutes passed in England, in relation to the support of the poor, do not declare such a conspiracy to be illegal.

King against Cope and others, 1 Strange 144. The defendants were indicted and convicted of a conspiracy, to ruin the trade of a prosecutor, who was a card-maker to the King, by bribing his apprentice to put grease into the paste, by which the cards were spoiled. It has been insisted on by the defendant's counsel that as cards were the subject of exportation, the conspiracy was in restraint of trade, and therefore an offence affecting the public. The public interest was then affected, by an injury done to an individual. Would it not from thence, seem to follow, that conspiracies to defraud large banking institutions, which by their loans, promote arts, manufactures and commerce, affect the public interest? Nay, on the same principles, are not all conspiracies to impoverish, equally indictable, as all persons who can be impoverished, may be said, to contribute in some way or other either directly or indirectly, towards the general interests of society?

King against Robinson and Taylor, 1 Leache's Crown cases 37 (1746.) The following is a summary of the facts; Mary Robinson, who lived with Mr. Richard Holland as a servant, in concert with Taylor, the other defendant, obtained a license to be married to Richard Holland, and the defendants were married in virtue of such license, by the names of Mary Robinson, widow, and Richard Holland, batchelor. Mary Robinson was dressed in white sattin, with a large black bonnet over her face and was given away by the deputy clerk. Taylor the other defendant during the ceremony, was so much agitated, that the sweat run down his face, and was married in the coat, shirt, neck cloth and wig of Mr. Holland, which Mary Robinson had secretly provided for the purpose; after the marriage, Taylor put on his own clothes, and those of Mr. Holland were put into a box, and sent to his house. When the defendants were arrested, they confessed the facts, and they were indicted for conspiring together that the said George Taylor should personate Richard Holland and that the said Mary Robinson should be married to the said Richard Holland, that she might entitle herself to his estate, and in pursuance of which conspiracy they were married accordingly."

Upon this evidence it was considered by the counsel on the part of the prisoners, that people might marry in whatever name

they pleased; and although the indictment charged, "that there was a conspiracy, yet there was no proof that any one had been injured, or that it was done with any view that a third person should suffer any injury from it. It must be made out, that there has been *a combination, to affect the interest, or injure the estate of a third person, before any such act can be construed, a conspiracy; for a conspiracy must be, to do an injury to the person or estate of another.*" The court overruled the objection, and declared, that it was the province of the jury to collect from all the circumstances of the case, *whether there was an intention or design to do a future injury to Mr. Holland;* and that it was not necessary to prove any direct or immediate injury, or even to shew any specific overt act of the conspiracy. The prisoners were found guilty, and punished. The foregoing case was decided by Chief Justice Willes, Justice Foster, and Baron Reynolds. The characters of Willes and Foster, are well known to the professional gentlemen of this country. In relation to the first, it may be said, that his views of the law were luminous and profound, and the authority of his opinions has been seldom questioned. Sir Michael Foster stood unrivalled in the knowledge of the penal law; and his mild administration of justice, in criminal cases, has embalmed his memory in the affections of a grateful country. The counsel for the prisoners, did not there contend, that a confederacy to defraud, was not indictable—they urged that it was, and that the prosecution must fail, because there was no proof of a combination to affect the interest or injure the estate of a third person; and that the fact of such combination, could not be inferred from the circumstance of the parties marrying in fictitious names, as the law did not interdict such an act; and the Court in delivering their opinion, adopted in their utmost extent the sentiments of the prisoners' counsel, for they say, "it was the province of the jury to collect from all the circumstances, whether there was an intention or design in the prisoners to do a future injury to Mr. Holland." It would seem, that this decision is a clear authority for the state; but it has been assumed in argument, by the defendants' counsel, that the gist of the prisoners' offence, consisted *first, in obtaining a* license to marry in the name of Mr. Holland: and secondly, in im-

posing on the parson by marrying in a fictitious name. It has not been shown, that those acts are penal under the common law or by the statute law of England, and it is believed they are not so. If they were criminal, and constituted the gist of the offence, why did the judges limit the enquiry of the jury to the simple fact, whether there was an intention or design in the parties to do a future injury to Mr. Holland? Why not tell them at once, that they need not puzzle themselves about the intentions of the parties, as their guilt stood confessed on the ground of having deceived not only the proctor, who sold the license, but also the parson who celebrated the marriage? It is most certain, from the report of the case, that the judges who decided the cause, never dreamed of such a principle. We are here again met by the objection, that this was a conspiracy to pervert the course of justice, because as the heirs of Mr. Holland would not after his death recognize the existence of his marriage with his house-keeper, she would be obliged to have recourse to a court of justice, to establish her right. In answer to this objection, it is sufficient to say, that the contingent abuse of judicial power formed no part of the opinion of the court; and if it had any connexion with the subject, it is difficult to conceive how it could have escaped the notice of such enlightened judges. If the case had been left to the jury, with the simple enquiry, whether the prisoners conspired to pervert the course of justice into an engine of oppression and wrong, they must have been acquitted. Their object was to defraud, the means a marriage in a fictitious name;-all ulterior means by which their criminal views were to be accomplished, must necessarily have been the subject of future adoption, and therefore formed no ingredient in the conspiracy; a reference to the testimony in the cause, will prove my views of the subject to be correct. Moreover, as the indictment did not charge the fact relied on, (to wit. a design in the parties to pervert the court of justice) it cannot upon any fair principle of legal construction, be brought to bear on the subject, as "in a criminal charge, there is no latitude of intention to include any thing more than is charged."

The King against Wheatly, 2d Burrows 1125, (1761.) The defendant was indicted at common law, for "knowingly selling

and delivering 16 gallons of amber beer, as and for 18 gallons, to one Richard Webb, and receiving the price for 18 gallons, with intent to deceive and defraud the said Webb."

On a motion to arrest the judgment, Lord Mansfield says, "that the fact here charged, should not be considered as an indictable offence, but left to a civil remedy by an action, is reasonable and right in the nature of things; because, it is only an inconvenience and injury to a private person, arising from that private person's own negligence and carelessness, in not measuring the liquor upon receiving it, to see whether it held out the just measure or not. *The offence that is indictable, must be such a one as affects the public, as if a man uses false weights and measures, and sells by them to all or any of his customers, or uses them in the general course of his dealings; so if a man defrauds another under false tokens; for these are deceptions that common care and prudence are not sufficient to guard against: so if there is a conspiracy, for ordinary care and caution is no guard against this, these cases are much more than private injuries, they are public offences.* But here it is a mere *private* imposition or deception—no false weights or measures are used; no false token given; *no conspiracy;* only an imposition upon the person whom he was dealing with, in delivering him a less quantity instead of a greater, which the other carelessly accepted; it is only a non-performance of his contract; for which non-performance he may bring his action."

"The law is clearly established and settled, and I think on right grounds. But on whatever grounds it might have been originally established, yet it ought to be adhered to, after it is established and settled. Mr. Justice Dennison concurred with his Lordship. This is nothing more than an action on the case turned into an indictment. *'Tis a private breach of contract, here are no false weights, no false measures. nor any false token at all; nor any conspiracy; if there be false tokens or a conspiracy, it is another case.*"

"Mr. Justice Foster. We are obliged to follow settled and established rules already fixed by former determinations, in cases of the same kind."

"Mr. Justice Wilmot concurred. This matter has been fully settled and established, and upon a reasonable foot. The true distinction which ought to be attended to in all cases of this kind, and which will solve them all, is this—that in such impostures or deceits, where common prudence may guard persons against the suffering from them, the offence is not indictable, but the party is left to his civil remedy, for the redress of the injury that has been done him. But, where false weights and measures are used, or false tokens produced, or such methods taken to cheat and deceive, as people cannot by any ordinary care or prudence be guarded against, there it is an offence indictable."

Lord Mansfield lays down the law, that conspiracies are offences against the public, on the same grounds that cheats, effected by false weights and measures, are indictable, namely—because *ordinary care* and *caution* is no guard against them. And Justice Dennison and Wilmot concur in the opinion—Sir Michael Foster intimates no opinion in relation to conspiracies to cheat, but uses the following expression, "We are obliged to follow settled and established rules already fixed by former determinations in cases of the same kind." Although it must be admitted, that this observation has a direct reference to the case then under adjudication, yet it clearly evinces, the high regard which he had for the settled and established principles of law; and therefore he could never have intended to question the doctrine laid down by the other judges, that a conspiracy to cheat was an indictable offence as, he could not but recollect, that eighteen years before, he had concurred with Chief Justice Willes and Baron Reynolds, in establishing that point in the case of the King against Robinson and Taylor, 1 Leech's Crown Cases 59. It is true, that the question whether a conspiracy to cheat was indictable, was not directly in issue in the case of King against Wheatly, but the court in deciding on the indictment then under consideration, were almost unavoidably led into an investigation of indictable cheats at common law; and if the various principles laid down by Lord Mansfield and his brother judges, were to be rejected, because they were not inseperably connected with the point raised by the pleadings, a great part of the reports of Sir James Burrows might be expunged, without a loss to the profession.

The Judges in the case of King against Wheatly, did not promulgate new principles, but declared the law as it had been established for ages. I have shewn that conspiracies to cheat and defraud, have been held by solemn adjudications to be indictable offences from the 13th year of the reign of Charles 2d, down to the year 1746, when the case of the King against Robinson and Taylor. (1 Leech 37,) was decided. The courts of law therefore according to Judge Foster, were obliged to follow, settled and established rules already fixed by former determinations. When Lord Mansfield and the other Judges declared, that such conspiracies were indictable, they were giving their sanction to the decisions of their predecessors, and which it was their duty to do, unless they considered the doctrine radically mischievous: And can such a sanction be disregarded, if there is any truth in the following declaration, made by his Lordship, "I never give a judicial opinion upon any point, until I think I am master of every material argument, and authority relative to it. It is not only a justice due to the crown, and the party in every criminal cause where doubts arise, to weigh well the reasons and grounds of the judgment, but it is of great consequence to explain them with accuracy and precision in open court, especially if the questions be of general tendency and upon topcis never before fully considered and settled, that the criminal law of the land may be certain and known." 4th, Burrows Rep. 2549. King against Wilkes. In the decision of the King against Wheatley, the King against Wilders, a Brewer, was referred to, by Lord Mansfield, who stated, "that Wilders was convicted for a cheat in sending to Mr. Hicks, an ale-house-keeper, so many vessels of ale marked as containing such a measure, and writing a letter to Mr. Hicks, assuring him that they did contain that measure, when in fact they did not contain that measure, but so much less, and the indictment was quashed." This case was decided in the 6th year of the reign of George 1; and there does not appear to be any printed report of it. But Sir James Burrows says, "I have a like account of this case; the court say that the prosecutor could not have been imposed upon without his own carelessness, and instanced the case of selling an unsound horse, affirming him to be sound, and they held that such private unfair dealings,

which did not affect the public, were not indictable crimes, *unless accompanied by false tokens or conspiracy, or selling by false weights and measures.*"

King against Rispall 3d. Burrows 1320. The defendants and others, were indicted at the Westminster sessions of the peace for conspiring falsely and without any probable cause, to charge a man with having taken out of a bag (not alledging the taking either to have been felonious or unlawful;) a quantity of human hair, thereby to extort money from him; upon the conviction of the defendant, the proceedings were removed into the court of King's bench, by Certiorari, where a motion was made to arrest the judgment, 1st, because an indictment for such a conspiracy did not lie before the general sessions of the peace; 2dly, because the fact which the defendant conspired to charge the prosecutor with, was no offence, as the indictment did not alledge the taking to be unlawful or felonious.

The court were of opinion that the justices of the peace had jurisdiction in the case. *A conspiracy being a trespass and tending to a breach of the peace*, and they held, that the indictment was well laid, and that the gist of the offence is the unlawful conspiring to injure the man by the false charge.

I shall here close my examination of the British decisions from the 13th, Charles 2d, down to the period of our revolution; they all confirm the doctrine, that confederacies to cheat are indictable at common law; and it must not be forgotten, that during the period, in which the forgoing numerous cases were decided, no adjudged case is to be found impugning this doctrine. The principle is established by a series of judgments, "the even tenor" of which is not interrupted by a solitary conflicting authority As to the reasons on which this doctrine rests; union imports strength and power, and the ordinary caution of individuals presents but a feeble guard against combination. Confederacies for illegal purposes, whether they be directed against public peace, or against the safety and estate of another, are of mischievous tendency; they are formed in defiance of the law, and in disregard of social right; they are of evil example, and if placed beyond the pale of criminal jurisdiction, may endanger the well-being of society.

The court of King's bench in the case of the King against Rispall and others, declare, that conspiracies are offences against the public, because they tend to a breach of the peace; libels, are indictable on the same ground; but unwritten slander is the subject of a civil remedy only; so at common law, private cheats could only be redressed by a civil action, while confederacies to effect them, were indictable, because they endangered the public peace.

I shall here take the liberty of introducing the opinion, of a most learned Judge, on the doctrine of conspiracy. Judge Parsons in deciding the case of the commonwealth against Judd and others, reported in 2d, Massachusetts reports 329, uses the following language. "The offence is complete, when the confederacy is made, and any act done in pursuance of it, is no constituent part of the offence, but merely an aggravation of it. This rule of common law is to prevent unlawful combinations; a solitary offender may be easily detected and punished, but combinations against law, are always dangerous to the public peace, and private security. To guard against the union of numbers to effect an unlawful design is not easy, and to detect and punish them is often difficult; the unlawful confederacy is therefore punished to prevent the doing any act in execution of it"

The Bill of Rights, (3 Sec.) declares, that the inhabitants of Maryland, are entitled to the benefit of the common law of England, and the trial by jury according to the course of that law. Where are our judges in the administration of justice, to look for the evidences of the common law? Are we not told by the highest authority, that "judicial decisions are the principal and most authoritative evidence that can be given of the existence of such a custom as shall form a part of the common law," and are we not instructed by the same authority, "that the monuments and evidences of the common law, are contained in books of reports and judicial decisions. and in the treatises of learned judges, preserved and handed down to us, from the times of the highest antiquity." Established principles ought to be adhered to "as well to keep the scales of justice even and steady, and not liable to waver, with every new judge's opinion, as also because the law being solemnly declared and determined, what was before uncertain is now become a permanent rule, which it is not in the breast of any subsequent judge to alter or vary from, according to

his own private sentiments, he being sworn to determine not according to his own private judgment, but according to the known laws and custom of the land; not delegated to pronounce a new law, but to expound and maintain the old one."

Stare decisis is therefore a sacred maxim, and if you remove it, you remove with it all the land-marks of the common law: and what do you substitute in their place? The discretion of judges. And this discretion does not differ from the common law, (which I hold to be one of the great bulwarks of our rights) less, than slavery from freedom, or the free institutions of our country, from the despotism of Turkey.

The King against Eccles, 1 Leech's Crown Cases 274, (decided in 1783); the first count charged, that the defendant with divers other persons, to the jurors unknown, "wickedly and by indirect means, intending to impoverish one H. Booth, and to deprive and hinder him from using and exercising the trade and business of a tailor, which he used and exercised, did fraudulently, maliciously, and unlawfully confederate and conspire, by wrongful and indirect means, to impoverish the said Booth, and to deprive and hinder him from following and exercising his aforesaid business of a tailor; and that the said conspirators did in pursuance of such conspiracy, indirectly, unlawfully, maliciously and unjustly, prevent and hinder him the said H. Booth from following his said trade and business, and thereby did impoverish the said H. Booth, to his great injury, to the evil example, &c. and against the peace, &c." The second count stated the conspiracy in the same words as the first, but did not charge that the conspirators, did any thing in execution of the conspiracy. The defendant was convicted, and Chambre and Topping moved to arrest the judgment, on the ground, that the indictment contained only a general charge of conspiracy, whereas it ought to have stated the acts that were committed to impoverish Booth, in order that the defendant might thereby have had notice of the particular charge, he was called upon to answer, and that the court might see, that the alledged conspiracy really existed. Lord Mansfield, (without hearing the other side) "the conspiracy and object of it are both stated in the indictment, but it is contended that the means by which the intended mis-

chief was effected, also ought to have been particularly set forth, as in the case of Rex against Stirling and others, but this is certainly not necessary, for the offence does not consist in the doing the acts by which the mischief is effected, for they may be perfectly indifferent, but in conspiring with a view to effect the intended mischief, by any means. The illegal combination is the gist of the offence; persons in possession of any articles of trade, may sell them at such prices as they individually please, but if they confederate and agree not to sell them under certain prices, it is a conspiracy. So any man may work at what price he pleases, but a combination not to work at certain prices is an indictable offence." Willis, justice. "All the cases on the subject were fully considered in the case of Rex against Kinmersly, in which it was decided, that in an indictment for a conspiracy, it is not necessary to state the means by which the conspiracy was effected."

Buller, justice. "The indictment states, that the defendants intending unlawfully, and by indirect means, to impoverish the prosecutor, unlawfully did conspire, &c. but nothing need to have been stated about the means, for the means are matter of evidence to prove the charge, and not the crime itself. The indictment therefore states too much, rather than too little." The defendants received judgment. It cannot but be remarked, that the learned counsel who conducted the defence in the above case, did not even intimate an opinion that a conspiracy to impoverish another was not indictable; their objection rested solely on the ground, that the means by which the injury was to be effected, ought to have been set forth; and it is difficult to conceive why Chambre, so celebrated for his legal learning, and who afterwards became a distinguished ornament of the bench, failed to press the objection, unless from a solemn conviction, that the doctrine was too firmly established to be even questioned in a court of justice. Here for the first time, the doctrine of conspiracies came under the judicial review of Judge Buller, to whose immortal honor it has been said, that "no person if guilty, would choose to be tried by him, but that every person, if innocent, would prefer him for his judge."

King against Lara, 6 Dumford and East 565, (1796); "an indictment at common law, charging, that the defendant, deceitfully intending by crafty means and devices, to obtain possession of certain lottery tickets the property of A., pretended that he wanted to purchase them for a valuable consideration, and delivered to A. a fictitious order, purporting to be a draft on a banker for the amount, which he knew he had no authority to draw, and that it would not be paid," by virtue of which he obtained possession of the tickets, and defrauded the prosecutor of the value, cannot be maintained, inasmuch as it does not charge the defendant with having used any false token to accomplish the deceit.

Erskine and other counsel who were concerned for the prosecution, after premising that the indictment was framed at common law, and not on the statutes of 33, H. 8, chap. 1, or 30th George 2d, against persons obtaining money or goods by false tokens or pretences, (as the property obtained were lottery tickets, which, according to the principles laid down in other cases, could not properly fall under the denomination of either money or goods) admitted, that the case must be governed by the rule laid down in Rex against Wheatly; that in the case of *a fraud upon an individual, it was incumbent on them to show either a conspiracy* which was not charged in the case, or that the fraud was effected by means of a false token or a false pretence, and that it was of such a nature, against which common prudence could not guard. The counsel then proceed to argue, that the pretences charged amounted to false tokens. It cannot escape observation, that the counsel for the prosecution in the discussion of the above case, were compelled to admit in its full extent, the correctness of the doctrine as laid down in the case of the King against Wheatly. The court decided, that the indictment could not be sustained, as no false token was used, and, that the giving the check, was only adding one lie to another. I cite this case for the purpose of showing that Lord Kenyon in delivering his opinion, gave his unqualified sanction to the doctrine advanced by Lord Mansfield and the other judges, in the case of the King and Wheatly; his words are, "the case of the King against Wheatly, seems to have clearly established the true

boundary between those frauds that are, and those that are not indictable at common law. Mr. Justice Dennison there said, there must either be a *false token or a conspiracy.*"

The King against Turner and others, 13 East 228; the marginal note is as follows: "An indictment will not lie for conspiring to commit a civil trespass upon property, by agreeing to go, and by going into a preserve for hares, the property of another, for the purpose of snaring them, although alledged to be done in the night by the defendants, armed with offensive weapons for the purpose of opposing resistance to any endeavour to apprehend or obstruct them." Lord Ellenborough says, "that all the conspiracies proceed on the ground, that the object of combination is to be effected by some falsity, insomuch, that in Taylor and Howlin's case, in Godbolt 444, it was held necessary, that the indictment should be false et malitiosé." Upon a reference to the case in Godbolt, it will be found that the defendants were indicted for conspiring falsely, to indict another person for a capital crime. Richardson, justice, there said, "that in conspiracy, the matter must be laid false et malitiosé." And Hyde, chief justice, said, "that upon probable cause, a man might accuse another before any justice of the peace of an offence, and although his accusation be false, yet the accuser shall not be punished for it." The case in Godbolt then establishes the principle, *that in conspiracies to indict,* the gist of the offence consists in malice and falsity; and if the law was not so, no two persons could conjointly prosecute another, however palpable his guilt might be, without the danger of being considered as criminal conspirators. But does this case warrant the doctrine laid down by his Lordship, that all the cases in conspiracy, proceed on the ground, that the object is to be effected by some falsity? If so, conspiracies to murder, to rob, or to commit burglary, or arson, must be expunged from the criminal code, because falsity is not a necessary ingredient in them. The general proposition laid down by Lord Ellenborough, is therefore not warranted by the authority, on which he relies for its support; and great as my respect must be for the learning of this distinguished judge, I cannot consent, that the best established principles can be destroyed by his dictum.

His Lordship proceeds: "The case against Eccles and others, was considered as conspiracy in restraint of trade, and so far a conspiracy to do an unlawful act, affecting the public. But I should be sorry that the cases in conspiracy against individuals, which have gone far enough, should be pushed further still. I should be sorry to have it doubted, whether persons agreeing to go and sport on another's ground, or in other words, to commit a civil trespass, should thereby be in peril of an indictment, which would subject them to an infamous punishment."

According to his Lordship's notions, the conspiracy in the case of the King against Eccles, was indictable, because it was in restraint of trade; we have already seen that this conspiracy was to prevent and hinder a tailor from pursuing his business, and thereby impoverishing him. The meditated victim of the conspiracy was an individual; on the same principle, the public interest must be affected by a conspiracy to impoverish a farmer, merchant, or any person, as well as a tailor, because the resources of all contribute to the general prosperity of the country.

His Lordship was not a judge when the case of the King against Eccles was decided, and it does not appear from the printed report of the case, that the decision was made on the ground on which he has been pleased to place it. And it cannot escape observation, that the case of the King against Eccles, the authority of which is not controverted by Lord Ellenborough, is in the very teeth of his favourite theory, that falsity is an essential ingredient in conspiracy. For the judges there decided, that it is sufficient to state the conspiracy, and the object of it, and that it is not necessary to set out the means by which the conspiracy was to be accomplished; now if the means are not stated, it cannot appear by the record, whether they were false or deceptive. But even admitting, that falsity must enter into the constitution of a conspiracy; the indictment now under consideration, charges the defendants with using false and deceptive practices, and therefore is sustainable under the authority of Lord Ellenborough's opinion. This view of the subject, renders any further comment on the case of King against

Turner and others unnecessary, as it does not assimilate itself in principle, to the case now before the court.

King against Berenger & others, Maule & Selwyn v. 3, 68. The indictment states, "that the defendants contriving by false reports and rumors, to induce the subjects of the King to believe, that a peace would soon be made between England and France, and thereby occasion without just cause, a great rise and increase of the public funds, and to injure and aggrieve the subjects of the king, who should on the 21st Feb. 54 year of the king, purchase, or buy any share in the government funds, did conspire to propagate among divers subjects of London, divers false reports and rumors, that Napoleon Bonaparte was killed, and that a peace would soon be made between England and France, and that the defendants would by such false rumors, as far as in them lay, occassion an increase and rise in the public funds, and other government securities, with a wicked intention, thereby to injure and aggrieve all the subjects of the King, who should on the 21st of February, aforesaid, purchase or buy any shares in the public government funds." The defendants being convicted, a motion was made to arrest the judgment on the ground, that the indictment charged no crime, and if it did, it was defective, inasmuch as it did not particularize the individuals who were to be defrauded. The court over-ruled the motion. Lord Ellenborough says, "a public mischief is stated as the object of the conspiracy; the conspiracy is by false rumors to raise the price of the public funds, and the crime lies in the act of conspiracy, and combination to effect that purpose. The purpose itself is mischievous, it strikes at the price of a vendible commodity by means of false rumors; it is a fraud levelled against the public, for it is against all such as may have any thing to do with the funds, on that particular day. It seems not to be necessary to specify the persons who became purchasers on that day." Le Blance states, "that it may be admitted, that the raising or lowering the price of the funds is not per se a crime—a man may have occasion to sell out a large sum, which may have the effect of depressing the price of stocks or may buy in a large sum, and thereby raise the price on a particular day, and yet he will be guilty of no offence. But if a number of persons conspire to raise the funds on a particular day, this is an of-

fence, and the offence is not in raising the funds simply, but in conspiring by false rumors to raise them on that particular day. The offence being to raise the funds on a particular day, its object was to injure all those who should become purchasers on that day, and not some individuals in that particular."

Bailey. "To raise the public funds may be an innocent act, but to conspire to raise them by illegal means, and with a criminal view is an offence, an offence not affecting the public in an equal degree, as if it were done with intent to affect the purchases of the commissioners for the redemption of the national debt, which would be affecting the public in its aggregate capacity, but still if completed, it will affect a large portion of the King's subjects who have occassion to purchase on that day, and it is not necessary to constitute this offence, that it should be prejudicial to the public in its aggregate capacity, or to all the King's subjects, but it is enough, if it be prejudical to a class of the subjects."

Dampire says, that "he cannot raise a doubt, that this is a complete crime of conspiracy, according to any definition of it. The means used were wrong, they were false rumors. The object is wrong, it was to give a false value, to a commodity in the public market, which was injurious to those who had to purchase on that day."

I humbly conceive, that this case fully supports the indictment against the present defendants. It was a conspiracy by false rumours, to defraud those persons, who on a certain day, might become purchasers of the public stock; they might be few or many, but still, it was but a conspiracy to defraud individuals. And Justice Bailey expressly declares, that it is not necessary that it should be prejudicial to all the King's subjects, but it is enough, if it is prejudicial to a class, and Lord Ellenborough says, it is a fraud levelled against the public, because it is against all such as may have any thing to do with the funds on that day. On what correct principle, can it be contended, that a confederacy to defraud all such persons as might become purchasers of stock on a certain day, should be a public offence, and that a conspiracy to defraud the stockholders of the United States Bank, (for the President and Directors of that institution, are

only the legal representatives of the proprietors of shares) should not be equally criminal? Does the conspiracy solely derive its criminal character from the circumstance, that the meditated fraud was levelled against certain unknown persons? Surely this distinction is too subtle for judicial reliance. If there was a difference, it would rather seem to operate against the persons accused in those cases, where the fraud was directed against the vested rights of individuals. Was not the purpose of the present defendants, mischievous? Did it not strike at the value of a vendible commodity in the market, by depreciating its productiveness, and thereby injuring the then stockholders, and all persons who should become such, before the alledged fraud wasdiscovered?

This decision most clearly demonstrates, that it is not necessary that the act conspired to be done, should per se be an indictable offence. To raise or lower the funds, may under certain circumstances be an innocent act; but where the object of the conspirators is to defraud others, by giving a false value to a commodity, by false rumors, the act of conspiring becomes in itself a substantive offence.

The latest English decision which has been brought within the view of the court, is that of the King against Henry and others. 2nd Barnwell and Alderson, 204.

The defendants were found guilty on an indictment, which charged, that they unlawfully did conspire and combine together, by divers false pretences and subtle means and devices, to obtain and acquire to themselves of and from P. D. and G. D. divers sums of money, of the respective monies of the said P. D. and G D. and to defraud them respectively thereof to the great damage &c.

A motion was made to arrest the judgment, because the indictment was framed too general, that the words "by divers false pretences, and subtle means and devices," gave no information to the defendants of the specific charge, against which they were to defend themselves. But the court over-ruled the motion, and Abbott chief justice said, "that the law did not require the means by which the conspiracy was to be accomplished to be set out, as the offence of the conspiracy may be complete, although the particular means are not settled and resolved on, at the time

of the conspiracy." Bailey declares, that when persons have once agreed to cheat a particular person of his money, although they may not have then fixed on any means for that purpose, the offence of conspiracy is complete, and that the case cannot be distinguished from that of the King against Eccles, which decided that the means need not be stated." Holroyd says, "it is sufficient to state the conspiracy, and the object of the conspiracy in the indictment." It will here be noticed, that the authority of King against Eccles is recognized.

The counsel for the defendants have contended, that this case cannot be an authority in favour of the present prosecution, because to effect a cheat by false pretences, is an indictable offence under the statute of 30th George 2d, chap. 24, (which has not been extended to this country,) and that therefore the conspiracy in the above case was to commit an offence which would have been indictable if committed by one person alone. Let us test this principle. It is clearly settled, that an indictment charging a defendant with obtaining money by false pretences, if it does not state what the false pretences were, cannot be sustained and this specification is necessary on three grounds. 1st, That the defendant may know what he is to defend. 2dly, That the court may see what punishment they are to inflict. And 3dly That as there are some pretences which are not within the statute they must be set out, that the court may see what they are Rex vs. Mason, 2d Term Reports 581. 2d Leech's Crown Cases 790. East's Crown Law 837, Faller's case. If then a conspiracy to cheat only, becomes indictable on the principle, that it is a statutory offence to cheat by false pretences, it is essential that the pretences should be stated in the indictment, because they are of the very essence of the crime. If you make the statutory false pretences, the foundation of the criminality of the conspiracy; if they constitute the corpus delicti, you must upon every principle of correct pleading set them forth, because it is a maxim of our law, that whatever circumstances are necessary to constitute the crime imputed, must be set out.

But what is the language of the judges in the case. They say that the means by which the conspiracy was to be accomplished need not to be set out, as the offence of the conspiracy may *b*

complete, although the particular means are not settled and resolved on at the time of the conspiracy. How then can we refer the criminality of the conspiracy, solely to the means to be used in the accomplishment of the fraud, when the court decide that it is not necessary that the means should be resolved on at the time of conspiring. By what spirit of prophecy can we divine, that the meditated means were interdicted by the statute, when the indictment does not state their nature and character. This case, in my apprehension, has no connexion with the statute of George the 2d.; and I view it as a complete authority in favour of the present prosecution.

Christian, in his notes to Blackstone's Commentaries, 4 vol. p. 136, states, that every confederacy to injure individuals, or to do acts which are unlawful or prejudicial to the community, is a conspiracy.

Chitty, in his Criminal Law, vol. 3, title Conspiracy, 566. uses the following language: "*But the object of conspiracy is not confined to an immediate wrong to particular individuals, it may be to injure public trade, to affect public health, or to violate public police, to insult public justice, or to do any act in itself illegal.*" And in support of those propositions, he cites many authorities, among which are some of those on which I have already commented.

The various authorities which have been the subject of examination, constitute in my opinion, "a mass of demonstration, than which nothing more satisfactory can be offered to the human mind."

The position, "that in many cases an agreement to do a certain thing, may be considered as the subject of an indictment for a conspiracy, though the same act, if done separately by each individual, would not have been illegal," has been supported by many of the decisions herein before referred to, and other authorities in support of the same principle, might be produced. As in the case of journeymen conspiring to raise their wages, each may insist on raising his wages, if he can; but, if several meet for the purpose, it is illegal, and the parties may be indicted for a conspiracy. 6 Term Rep. 636. So the offence of seduction is not cognizable by our courts, but if persons conspire

to entice a female under the age of twenty-one years, from her parents, and to place her in the power of one of the conspirators, for the purpose of facilitating an illicit sexual intercourse between them, the law deems such an agreement criminal. King against Sir Francis Delavall and others, 3d Burr. Rep. 1434.

I shall briefly notice some of the American decisions on the subject of conspiracies, 1 Mass. Rep. p. 473. Commonwealth against Ward and others. The defendants were indicted, convicted and received judgment for conspiring to obtain possession of the goods of one William P. Davis, and then to abscond out of the commonwealth and defraud him thereof. The indictment charged, "that the defendants in pursuance of said conspiracy did pretend to the said William P. Davis, that they were about to open a retail grocery store, in the town of Portland, for selling goods in that business, and that they had hired a convenient house in that town for that purpose, and that the said defendants did request the said Davis to furnish them with certain goods on credit, and that the said Davis confiding in the said deceitful practices, did furnish them groceries on a credit; whereas, in truth and in fact, the said defendants never intended to open a grocery store for the vending of goods in that business, but were idle and dissolute persons, wholly unable to pay for the said goods, and did afterwards dispose of the same greatly below their value."

In 2d Mass. Reports. The Commonwealth against Judd and others. The defendants were indicted for a conspiracy "to manufacture certain materials, one of which was good indigo of foreign growth, a base composition resembling genuine indigo of the best quality and foreign growth, with a fraudulent intent that the same should be exposed to sale, and sold at public auction as genuine indigo of the best quality; and that in pursuance of the conspiracy, they exposed the base composition for sale at auction, and sold it for genuine indigo of the best quality and foreign growth. The jury found that the defendants were guilty of a conspiracy to make base indigo, with a fraudulent intent to sell the same, but they did not find that the same was sold at auction in the manner set forth."

The court supported the indictment, and Judge Parsons in delivering the opinion of the court, expressed himself in the language which has been before noticed.

Commonwealth against Tibbits, sen'r, and Tibbits, jun'r. 2d Mass. Rep. 536. The defendants were indicted for conspiring to accuse one Ichabod Rollings of receiving and concealing stolen goods, and in pursuance of said conspiracy, falsely charging the said Rollings in the hearing of divers citizens, with concealing in his dwelling house or barn, divers goods, which had before been stolen from one W. and in further pursuance of the said conspiracy, fraudulently placing the said goods under the floor of the said Rollings's dwelling house or barn, with a design that he should be falsely accused of receiving and concealing the same. The court decided, that a conspiracy to charge a person with a crime, and in pursuance of the conspiracy, falsely to affirm that he is guilty, is an indictable offence without procuring any legal process; that the gist of the offence was the conspiracy, that the placing of the goods was *mere matter of aggravation*, and that therefore the uncertainty arising from the expression dwelling house or barn, was immaterial.

In the states of New-York and Pennsylvania, conspiracies among journeymen shoemakers and bootmakers not to work under certain wages, have been adjudged to be indictable offences. In the Court of Oyer and Terminer and Goal Delivery for Baltimore county, it was decided, that a conspiracy to cheat and defraud was the subject of a criminal prosecution. But motives of delicacy forbid me from relying on this case as an authority, as I presided in that court when the decision was given.

The counsel for the defendants have argued, that the statute *de conspiratoribus passed in the 33d year of the reign of Edward* 1st, gave a definition of all the conspiracies indictable at common law; and, that no other conspiracies than those recited in the statute, were considered as criminal offences at the epoch of colonization, and inasmuch as conspiracies to cheat and defraud, were not then deemed to be criminal, the modern common law cannot be a rule of action for us, as our forefathers only brought with them, such parts of the common law, existing at the time

of their emigration, as were adapted to their local and other circumstances.

I shall briefly examine this objection. The statute of 33d, Edward 1st. De Conspiratoribus declares, that "conspirators be they, that do confederate or bind themselves by oath, covenant, or other alliance, that every of them shall and will bear the other falsely and maliciously to indict, or cause to indict falsely, to move and maintain pleas, and also such as cause children within age, to appeal men of felony, whereby they are imprisoned and sore grieved, and such as retain men in the country, with liveries or fees, for to maintain their malicious enterprizes, and this extendeth as well to the takers as the givers; and stewards and bailiffs of great lords, who by their seigniory, office and power, undertake to bear or maintain quarrels, pleas or debates, that concern other parties, than such as touch the estates of their lords or themselves. This ordinance and final definition of conspiracy, was made and accorded by the king and his council in parliament, in the 33d of his reign; and it was further ordained, that the justices assigned to the hearing and determining felonies, should have a transcript thereof."

What was the object of the act? Was it to give a particular definition of the conspiracies therein mentioned, or did the parliament intend, that no conspiracies should be indictable, unless they fell within some one of the enumerated classes of the act? I hold the first to be the true exposition, and it will be found that this construction has been given to the act, from the reign of Edward the 3d, down to the year 1817, when the case of the King against Henry and others, reported in 2d Barnwell and Alderson 204, was decided.

In the Book of Assizes, 27th Edward 3d, chap. 44, is to be found the following passage, "And note that two were indicted for confederacy, each of them to support the other, whether the matter was true or false, notwithstanding that nothing was alledged to have been actually done. The parties were put to answer, because it was a thing forbidden by law." So in the next section of the same book, it is declared, "that inquiry shall be made concerning conspirators and confederators, who bind them-

selves by oath, covenant, or other agreement, that each will support the enterprizes of the other, whether true or false."

Now it is most manifest, that the above cases do not fall within any of the instances enumerated by the statute De Conspiratoribus. They were not conspiracies, falsely to indict or to move and maintain pleas, nor to cause children within age to appeal men of felony, nor to retain men in the country with liveries to maintain malicious enterprizes; nor were they included within the last clause of the statute, which relates to the stewards and bailiffs of great lords; and although the conspiracy comprised leagues offensive and defensive, still if the conspirators had been indicted on any branch of the statute, they must have been acquitted, because they did not conspire to do any of the specific acts which are there forbidden.

This decision is not only recognized by Lord Coke in the Poulterers' case, (9th Rep. 57,) but it is adopted by Hawkins in his Pleas of the Crown, 1st vol. p. 348, 349. Nay, that important principle of law, which declares that conspiracies are substantive offences, and punishable though they be not executed, rests on this decision in the Book of Assize, as its foundation.

Noys Reports 130, "Breerton and Townsend upon especial day, decided in the 12th year of James 1st. An information by Mr. Attorney against Sir Thomas Breerton, Richard Breerton his brother, and Sir Henry Townsend and his wife, for the suppressing of a will, and all the defendants, but Sir Henry were fined to the King," upon a reference to the case it will be found, that the defendants attempted by this fraud to disinherit the wife of the relator or prosecutor. What was the form of the count contained in the information does not appear, but as several persons were convicted, they were necessarily charged with a conjunctive act. Nay, it is impossible that two persons could be jointly concerned in the suppressing a will, unless there was an agreement or combination between them to do the act. And this case is referred by East, in his valuable treatise on criminal law, (volume 2d. 823.) to the head of cheats effected by conspiracy. There was no positive law of England, declaring that the suppression of a will, should be a criminal offence, and if the suppression had been the act of a single person, it would have

been only a private fraud, but when the fraud was effected by the process of conspiracy, it became an indictable offence. Thus it appears, that as early as the reign of Edward 3d, other conspiracies than those enumerated in the statute of 33 Edward 1st. were deemed to be criminal, and that in the reign of James the 1st, a conspiracy to defraud another by the suppression of a will, was the subject of a criminal prosecution. And it must be remembered, that those decisions were made before the colonization of Maryland, the charter of the province bearing date in the 8th year of the reign of Charles the 1st. The idea that the statutes of 33d of Edward 1st. contained a definition of all the conspiracies indictable at common law, does not appear to have suggested itself to any of the professional gentlemen, who argued the cases which have been the subject of examination; and that the judges did not entertain such an opinion, is most manifest, or they could not have given the greater part of the decisions which have been noticed in this opinion. Lord Ellenborough, who thought the doctrine of conspiracy had been carried far enough, supported the indictment in the case of the King against Berenger and others, which he could not have done, if he had supposed that the statute of Edward 1, comprized all indictable conspiracies. That such was the effect of the statute, has not been intimated by any judge from the time of Edward 3d, down to the year 1817, and if an uniform construction, has judiciously prevailed, in relation to this statute, for a period of more than four hundred and forty years, is it befitting any court, to say, at this late period, that their predecessors have been grossly ignorant of the law, which they were sworn to administer? Such an opinion would subject the court which should pronounce it, to the serious imputation of sacrificing the accumulated wisdom of successive ages, and the best established principles, to their own peculiar theories of right and wrong. Nay, if the construction given by the counsel for the defendants, to this act of parliament is right, not only conspiracies to defraud, but conspiracies to murder, to rob, to insult public justice, by confederating to impose false certificates of a fact on the court, (6 Term. Rep. 366,) with a variety of others, cannot at common law be the subjects of a criminal prosecution.

But even supposing that there was no adjudged case on the subject, before the colony was settled, still it cannot follow that the offence was not then indictable under the principles of the common law.

What is the common law of England? Is it not a great system, in its nature, one and perpetual, not changing nor varying like the statutes of a country, but having its foundation laid deep in the eternal principles of justice? It is a mass of principles, which unfold themselves as the rising exegencies and occasions of society require their application; and that which was the common law, at the epoch of our revolution, was always the common law.

This is evident from the consideration, that although subsequent decisions may over-rule former ones; the common law is not thereby changed; for in such a case the subsequent judges "do not pretend to make a new law, but to vindicate the old one from misrepresentation. They do not declare the former sentence was bad law, but that it was not law." Precedents do not constitute the common law, it exists in principles, independent of decisions, which are high and authoritative evidence of the law. One of the most distinguished judges that ever shed lustre around the seat of justice, in delivering the opinion of the court, expresses himself thus, "The law of England would be a strange science indeed, if it were decided on precedents only. Precedents serve to illustrate principles, and give them a fixed certainty. But the law of England which is exclusive of positive law enacted by statute, depends on principles, and those principles run through all the cases, according as the particular circumstances of each have been found to fall within the one or the other of them, (by Lord Mansfield, Cowper 59.) If our forefathers brought only that part of the common law which had been established by judicial precedents, and if we their decendants, can only claim the benefit of so much as they brought with them, our condition must be very different from what we have fondly imagined it was; and it would be no difficult matter, under such an hypothesis, to prove that our judicial tribunals from the highest to the lowest, have been in the constant habit of usurping authority, and of imposing their own notions on the

community, as part of the common law. On what footing are to be placed all our decisions on the subjects of Insurance, Freight, Promissory Notes, Bills of Exchange &c. In what books of reports or writings of the sages of the law, compiled before the period of emigration, do you find an authority or precedent fixing the important principles by which those contracts are governed, or regulated? The difficulty of this objection will not be removed, by saying that they are cases of contracts, the construction of which forms one of the most important branches of the common law; for the question will still recur, where is the precedent for the exposition of each particular case? Besides, the same answer would equally apply to criminal cases; as it falls within the scope of common law, "to declare offences and define their punishment." If a man should be indicted for exposing himself naked in the streets of Baltimore on Sunday, when the various religious congregations were eagerly pressing forward to their respective temples, to offer up their adorations to their God and Saviour, would the court direct the prosecuting counsel to search for precedents before the date of the charter? And if they did, could they be found? No. And would the party accused therefore, be acquitted, or would not the court declare that such an offence against public decency and good morals might and ought to be punished under the principles of the common law? See Sedley's case. 1 Siderfin and Orbin's case. (Sayer's Reports.) Can a precedent be produced before the colonization of an indictment charging a person with selling obscene prints? And would this act, the inevitable tendency of which is to corrupt moral sentiments, therefore be deemed innocent within the view of our penal code? It may safely be affirmed, that numerous offences have been punished in this state as common law offences, which were not adjudged to be such before the colonization.

As our forefathers brought with them as their birthright, all such parts of the common law as were applicable to their local circumstances, the question necessarily recurs, were conspiracies to cheat and defraud indictable under the principles of that law? And if they were, is the doctrine applicable to their country? I have endeavoured to prove the first proposition by a mass of adjudged cases; and surely there is nothing in the doctrine, which

could render its introduction improper. Its tendency is to strengthen the obligation of moral duties, to secure the enjoyment of property, and to punish acts of dangerous example and mischievous tendency, and if the question had been agitated in our courts of justice, before the revolution, can any lawyer doubt what would have been the decision?

It has been urged in argument that the prosecuting attorney ought to have shown that the courts of Maryland, before our revolution, had adopted this part of the common law. That those courts had a right to declare what part of the common law should be extended, and what not, and that they had a right also to expound the common law, are points which cannot be questioned: And if they had decided, that this branch of the law was not in force, such a decision would have been entitled to the highest respect and consideration. It does not appear from the researches that have been made, that such a question ever did occur; and the absence of adjudication on the subject, cannot be urged as an argument, unless we are prepared to say, that we are only entitled to the benefit of such part of that law, as were by the Colonial courts adjudged to be in force. Such a position would be directly opposed to the declaration of rights, which declares, that the inhabitants of Maryland are entitled to the benefit of the common law of England. It must not be understood, that I mean to intimate, that by this declaration, the whole body of the common law became the law of Maryland. Various exceptions were necessarily implied. All those rules of the common law, which were inconsistent with the theory and spirit of our political institutions ceased to have any operation, upon the dissolution of our connexion with the mother country; and is the power of punishing confederacies to cheat and defraud inconsistent with the freedom of our political establishments? Do we not now as well as formerly, stand in need of all those legal restraints which are necessary to guard the social rights from violation? And must republican governments, whose foundations are laid in the principles of public virtue, abstain from punishing confederated acts of fraud under the idea that the punishment of such offences is inconsistent with the personal freedom of the citizen?

The case of Griffith against Griffith's executors, decided in the general court of Maryland, and afterwards affirmed in the court of appeals, (reported in 4th Harris and M'Henry 122,) has been relied on by the defendant's counsel.

The question which arose in that case, was this; was the wife entitled to one third part of the personal estate of her husband, who had bequeathed the whole of it away from her?

Blackstone in the 2nd volume of his Commentaries 497, says, that from the reign of Henry the 2nd, to the reign of Charles the 1st. inclusive, a man's personal estate was to be divided into three equal parts, of which one went to his heirs or lineal descendants, another to his wife, and the third was at his own disposal; the shares of the wife and children were called their reasonable parts. But, that the law had been altered by imperceptible degrees, and that the deceased might then by will, bequeath the whole of his goods and chattles, though it would not be perceived when first the alteration began.

Sir Edward Coke, (2nd Inst. 33.) was of opinion, that this was never the general law, but only obtained in particular places by special custom.

Chase, chief judge, in delivering the opinion of the court uses the following language. "I consider the acts of Assembly of 1704, 1715 and 1719, as a clear and explicit recognition of the right of the wife to one third part of the personal estate, and I consider these successive acts of the Legislature and the uniform practice conformable thereto, as the best evidence of what was the common law in the opinion and judgment of the legislature of Maryland."

"Suppose it questionable and not well settled in England, the acts of the legislature and the practice here prove beyond a doubt, that it was the general opinion, the wife was entitled to a third part of the personal estate by the common law."

It is difficult to conceive how the principle of this decision can apply to the subject now under consideration, as it was surely competent for the Colonial legislature to recognize a principle of the common law, or to change the same by positive enactment If the defendant's counsel could have shown that conflicting opinions prevailed in England, at different periods, on the subject of

conspiracies, and that the acts of assembly of this state, recognized the law, as declared by the one or the other decision, the authority of Griffith, and Griffith might have been appealed to with confidence.

It has been objected, that the common law of England in relation to conspiracies is harsh, as it does not require positive proof of the confederation, but permits it to be inferred from circumstances. Is this feature of the law peculiar to conspiracies? May not various offences be proved to the satisfaction of a jury by circumstantial evidence?

The chain of circumstances in this, as in all other cases, must be strong and unbroken, and if a man can be found guilty of the crime of murder on this species of evidence, there can be little reason to complain, that it should be deemed legal and sufficient in cases of conspiracy. The doctrine of conspiracies has been arraigned, on the ground that it punishes unexecuted intentions. But it is believed that the fallacy of this argument, consists in considering a confederacy as matter of intention only. The offence is compounded both of fact and intention. The confederacy or agreement between the parties is a fact, and if the object of such an agreement is unlawful, the law considers the conspiracy as a substantive offence. It has been said in argument, that as the courts of Maryland have not declared by their decisions conspiracies to defraud, to be indictable, it would be the height of injustice to punish the defendants for acts which they did not know to be criminal, at the time of committing them. But such an excuse is not admissible in a court of justice. If persons act unadvisedly, they must submit to the consequences—A different doctrine would shake to its foundation, the whole system of social order.

Having shown that conspiracies to cheat, were indictable offences at common law, I shall briefly enquire whether there is any thing in the constitution or laws of the United States, that can extract this misdemeanor from the grasp of the judiciary of the State. That the constitution of the United States did not abolish the common law of Maryland, is a proposition too clear for discussion, and it is equally clear, that the state judiciaries can exercise all the authorities and powers which they were

wont to do before the adoption of the constitution of the United States, except in those cases, where they are prohibited by it, or by the laws of congress made in pursuance thereof, and there will be no hesitation in admitting the principle, that where a jurisdiction is constitutionally conferred on the courts of the Union, and the exercise of a similar jurisdiction by the judiciaries of the state, would produce repugnancy or incompatibility, the prior jurisdiction of the state courts would be dislodged. Hence admiralty and maratime jurisdiction has been considered under the principles of the constitution, as having been exclusively conferred on the judiciary of the United States;(*a*) And it will also be conceded, that the judicial power of the United States, in all cases, may be made exclusive of state authority at the option of congress.(*b*)

The question then occurs, will the exercise of the primitive jurisdiction of the state, in taking cognizance of the offence charged, come in collision with the judiciary power of the United States. That Congress had the power to guard the interest of the bank against all frauds, by such penal sanctions as their wisdom might have suggested, cannot be doubted They might have declared, that a conspiracy to defraud the bank, should be an offence against the United States, and as such, it would necessarily have been congnizable in the federal courts, under the provisions of the judiciary act. But they have not deemed it fit, to put the offence within the pale of their penal code, and having omitted to do this, the defendants have committed no offence against the United States, as the courts of the Union have no common law jurisdiction in cases of crime;(*c*) for the legislative authority must first make an act a crime, affix a punishment to it, and declare the court that shall have jurisdiction over the offence.(*d*)

Here, then, is no collision between the courts of the Union and the judiciary of the state; the former have no cognizance,

(*a*) Martin vs. Hunter's lessee, 1 Wheaton 304, 337.

(*b*) ib.

(*c*) United States against Hudson and Goodwin, 7 Cranch 32. United States against Cooledge and others. 1 Wheaton 415.

(*d*) Idem.

because no offence has been committed against the United States; the latter, by entertaining jurisdiction, are in the exercise of their original common law powers. It cannot seriously be thought, that the potential authority of Congress, to make the acts charged in the indictment, an offence against the United States, can annihilate the previously vested jurisdiction of the state courts. A principle so repugnant to the sovereignty of the states, is no where to be found in the constitution, or the laws of the Union. Under such a construction, the judiciaries of the state, in the administration of criminal law, would be often embarrassed by the most perplexing inquiries, relative to the extent of the powers of Congress, both express and incidental. The doctrine would be alarming in every point of view. Congress has power to pass laws, inflicting punishment on those who should wilfully destroy the banking houses by fire; but they do not think fit to exercise the power. Are the culprits therefore irresponsible to the jurisdiction of the state, within which the offence was committed? Various other cases might be adduced to show, the pernicious consequences of the doctrine, and its tendency to impair the security of the states. The exercise of state jurisdiction, produces no collision, so long as the authority of Congress to legislate on the subject, remains unexecuted: And, when it shall suit their wisdom to act, they can, by making "the judicial power of the United States exclusive of state authority," prevent all the inconveniencies which might arise from the conflicting jurisdiction of distinct judiciaries.

I am not disposed to question the power of Congress to pass an act, declaring that the offence charged, should be dispunishable by the courts of the individual states; but still the jurisdiction of the state courts can only be annihilated by the exercise of this power by Congress; their silence on the subject can work no suspension or annihilation of state authority, unless we are prepared to admit the position, that all criminal violations of the rights of property, where the right has been created or conferred by acts of Congress, are emancipated from the cognizance of the state judiciaries.

It is most true, "that no part of the criminal jurisdiction of the United States can be delegated to state tribunals;"(e) but it must

(e) Martin vs. Hunter, 1 Wheaton.

be remembered, that the crime alledged against the defendants, is not an offence against the United States, as Congress has not declared it to be such. The act of Congress, by creating the bank, and authorizing the establishment of its branches, furnished an occasion for doing the acts complained of; but those acts became criminal by the power of the common law alone. Hence, the jurisdiction of the state judiciary, with reference to this offence, is not derivative, but original.

It has been urged in argument, by the defendant's counsel, that this court cannot entertain jurisdiction in a case of this kind, without subjecting the bank to the visitation of state authority, and that the establishment of such a principle, would be highly dangerous, as the state legislatures might, under the guise of protecting the interest of the bank, pass laws calculated to destroy the institution, or to impede its operation.(*f*) That a power in the state judiciaries to punish crimes against the state, committed to the prejudice of the bank and by its officers, cannot interfere with the security of the bank, is a proposition self-evident: And, if a state legislature should (be the pretence what it may) pass laws, the tendency of which was to impede or controul the operation of the bank; it would be the duty of the judicial tribunals of the state, to declare such laws unconstitutional.(*g*) It is unnecessary to enquire, whether the judicial tribunals of the Union and the states may exercise a concurrent jurisdiction in criminal cases, as the record does not present such a question. Upon investigation it will be seen, that Congress has recognized the assistant judicial power of the states, over offences created by the laws of Congress. Hence, the proviso in the act of the 24th February, 1807, chapter 75, concerning forgeries on the Bank of the United States, which declares, that nothing in that act contained, shall be construed to deprive the courts of the individual states of jurisdiction, under the laws of the several states, over offences made punishable by that act; and a similar provision is to be found in the act of 21st April, 1806, chap. 49, concerning the counterfeiters of the current coin of the Union.

The courts of the several states, before the adoption of the

(*f*) See M'Culloch against the State of Maryland, 4 Wheaton 316.
(*g*) See M'Culloch against the State of Maryland, 4 Wheaton 316.

Constitution of the United States, had cognizance of all cases of forgery committed within their limits; and those acts of Congress do not confer on the state judiciaries a new jurisdiction, for that would be a grant of power, not within the sphere of their authority, but they leave the primitive judicial powers of the states in full operation.(*h*)

I am of opinion, that judgment ought to be entered on the demurrer, for the state.

(*h*) See Houston and Moore, 5 Wheaton 25, 26, 27, 28, 33. See Martin vs. Hunter's lessee, 1 Wheaton 337.

OPINION

OF

THE COURT OF APPEALS,

Upon the question, whether a conspiracy to cheat or defraud a Bank, by the officers thereof, is an offence at Common Law, and punishable in Maryland?

COURT OF APPEALS, DECEMBER TERM, 1821.

The STATE *vs.* BUCHANAN, *et al.*

ERROR to Harford County Court. The indictment contains two counts: The first charges the defendants with an executed *conspiracy*, falsely, fraudulently and unlawfully, by wrongful and indirect means, to cheat, defraud, and impoverish *the President, Directors and Company of the Bank of the United States;* and the second charges them with a *conspiracy* only, falsely, fraudulently and unlawfully, by wrongful and indirect means, to cheat, defraud, and impoverish *the President, Directors and Company of the Bank of the United States.* The defendants demurred to the indictment; first, on the ground that a state court has no jurisdiction, but that the matters alledged in the indictment are cognizable, (if at all,) in the courts of the United States; and secondly, that the facts charged do not amount to an indictable offence. The County Court, (*Hanson* and *Ward*, A. J.) ruled the demurrer good, and discharged the defendants. The present writ of error was brought on the part of the state.

The case was argued at the present term, before CHASE, Ch. J. BUCHANAN, EARLE, and MARTIN, J. by

Murray, (District Attorney for the sixth judicial district, by substitution of the Assistant Attorney General, with the approbation of the court,) assisted by *Wirt* (Attorney General of the United States,) *Harper* and *Mitchell*, on the part of the state; and by

Pinkney, *Winder* and *Raymond*, for the defendants in error.

The opinion of the Court of Appeals, was delivered by

BUCHANAN, J. This case was brought up by a writ of error directed to the judges of Harford County Court; and it has been strongly urged, that a writ of error will not lie at the instance of the state, in a criminal prosecution, and therefore that the writ in this case was improvidently sued out, and ought to be quashed. But it is said in 2 Hale's P. C. 247, the authority of which it is difficult to question, and indeed we require none higher, "that if A be indicted of murder, or other felony, and plead *non cul*, and a special verdict found, and the court do erroneously adjudge it to be no felony; yet so long as that judgment stands unreversed by writ of error, if the prisoner be indicted *de novo*, he may plead *auterfoits acquit*, and shall be discharged; but if the judgment be reversed, the party may be indicted *de novo*." And this is not a loose *dictum*, but it is laid down and repeated as text law; for in page 248 it is stated, that "in the case of the special verdict above, where an erroneous judgment of acquittal is given, yet it is conclusive to the king till it be reversed by error." So in page 394, speaking of the ancient form of a judgment of acquittal, he says, "and if the entry were such, I do not think the prisoner could ever be arraigned again, notwithstanding the insufficiency of the indictment, till that judgment of acquittal were reversed." And again, in page 395 of the same book, "and if in Vaux's case the judgment had been so entered (that is, *quod eat inde quietus,*) he could never again have been indicted for the same offence, notwithstanding the defect of the indictment, till that judgment reversed by writ of error." Hence it is manifest, that in the opinion of Lord Hale, the king might have a writ of error in a criminal case; since it would be absurd to say that a man who had obtained a judgment of acquit-

tal for a defect in the indictment, or on a special verdict, could never again be indicted for the same offence, until that judgment was reversed by writ of error, if a writ of error would not lie. Fortified by such authority alone, in the absence of any legislative provision in this state on the subject, we think we might safely say, without further inquiry, that the writ of error in this case was properly sued out. But instances are not wanting of writs of error being prosecuted by this state, in criminal cases; as in the State vs. Messersmith & Askew, the State vs. Forney, the State vs. Brown, and the State vs. Durham, in the court of oyer and terminer, &c. for Baltimore county. In each of those cases there was a demurrer to the indictment, and judgment on the demurrer for the defendant, in the court below. They were all taken to the late general court on writs of error by the state, *Luther Martin*, attorney general; and in each case the judgment was reversed. And there is no sufficient reason why the state should not be entitled to a writ of error in a criminal case. It is perhaps a right that should be seldom exercised, and never for the purpose of oppression, or without necessity; which can rarely, and it is supposed would never happen, and would not be tolerated by public feeling. But as the state has no interest in the punishment of an offender, except for the purpose of general justice connected with the public welfare, no such abuse is to be apprehended; and as the power of revision is calculated to produce a uniformity of decision, it is right and proper that the writ should lie for the state, in the same proportion as it is essential to the due administration of justice, that the criminal law of the land should be certain and known; as well for the government of courts and information to the people, as for a guide to juries; who, though (by the laws and practice of the state) they have a right to judge both of the law and of the fact, in criminal prosecutions, should, and usually do, respect the opinions and advice of judges, on questions of law, and would seldom be found to put themselves in opposition to the decisions of the supreme judicial tribunal of the state.

It has also been contended, that the return of the writ of error in this case, supposing the writ to have been properly sued out, is defective in this, that it is not under the hand and seal of

the chief judge, but that there is only a transcript of the record sent up, under the hand of the clerk and the seal of the court, with the writ of error annexed. But there is nothing in the objection. By the fifth section of the act of 1715, ch. 4, "for regulating writs of error, and granting appeals from and to the courts of common law within this province," it is enacted, "that the method and rule of the prosecution of appeals and writs of error, shall for the future be in manner and form as is hereinafter mentioned and expressed; that is to say, the party appealing or suing out such writ of error as aforesaid, shall procure a transcript of the full proceedings of the said court, from whence such appeals shall be made, or against whose judgment the writ of error shall be brought as aforesaid, under the hand of the clerk of the said court and seal thereof, and shall cause the same to be transmitted to the court before whom such appeal or writ of error is or ought to be heard, tried and determined," &c. The preamble sets out that "forasmuch as the liberty of appeals and writs of error, from the judgment of the provincial and county courts of this province, is found to be of great use and benefit to the good of the people thereof;" and the second section provides under what circumstances alone, an appeal or writ of error shall operate as a *supersedeas*. The act is silent on the subject of the *return* of the writ of error, and only directs that the transcript of the proceedings shall be under the hand of the clerk and seal of the court, without dispensing with the signature of the judge to the return of the writ; yet from that time to the present, the uniform practice under that act has been, for the clerk to send up the transcript of the proceedings under his hand only, and the seal of the court, together with the writ of error, as is done in this case, unaccompanied by the signature of the judge to the return of the writ. And if it should be admitted that it originated in error, it is now too late to shake a practice so long settled. It may perhaps be doubted whether that act of the general assembly ought not to be understood as being applicable to writs of error in civil causes only; and it has been urged, that no practice growing out of it in relation to such cases, can be brought in aid of a defective return in a criminal case. But whatever may have been the construction originally given

to it in that particular, whether it was held to extend as well to criminal as to civil cases, or whether the returning of writs of error in the same manner in criminal as in civil cases, had its birth in the circumstance, that the mandate of the writ being the same in each, no good reason could be perceived why the manner of the return should be different; or from whatever other cause it may have arisen, the practice is found on examination to have been the same. That was the form of the return in the cases of the State vs. Messersmith & Askew; the State vs. Forney; the State vs. Brown; and the State vs. Durham; the cases before alluded to for a different purpose. The same return was made in Burk's case, an indictment for a Rape, which was tried before me in Washington county court, in the year 1809, and was brought up by writ of error to this court, by the present attorney general (*Luther Martin,*) who defended him with great zeal and ability in the court below, and it is presumed looked well into the subject. And so in every criminal case removed by writ of error, that is to be found among the records of the late general court, of which there are many. The return therefore in this case has the sanction of the same authority on which a similar return in a civil case would rest. The authority of a settled practice for more than a hundred years, with which we are content without seeking to support it on any other; nor is it pretended that such a return would be insufficient in a civil case; and there is no sensible difference between a criminal and a civil case in that respect, or any sound reason why the return should not be the same in one as in the other. But there is no uniform rule for the return of writs of error; and if the object of the writ, which is that a true and perfect transcript of the proceedings shall be brought up, is substantially gratified, it is all that courts do or need look to. If a writ of error be brought in parliament on a judgment in the Court of King's Bench, the chief justice goes in person to the House of Lords, with the record itself, and a transcript, which is examined and left there, and then the record is brought back again into the King's Bench. 2 Tidd's Practice, 1092. In the court of common pleas the practice is different. There on a writ of error returnable in the King's Bench, it is usual for the chief justice to sign

the return. *Ibid (note.)* But that is not absolutely necessary, for the court of King's Bench will not stay the proceedings for want of his signature; and though the writ of error requires the record to be sent *sub sigillo*, yet this is never practised. 2 Strange, 1063. And if the *seal* can be dispensed with, why may not the signature also? Since the omission of either, is equally a departure from the mandate of the writ, and both are dispensed with in the case of a writ of error returnable from the King's Bench in the House of Lords. Besides, in England, a writ of error must be directed to him, who has the custody of the record wherein any judgment is given; and for that reason it is, that a writ of error brought on a judgment in the court of common pleas, for instance, is always directed to the chief justice of that court, who has the custody of the record. But in this state, though the form of the writ as used in England, and introduced here at a very early period, is still retained, yet the clerk of the court in which the judgment is rendered, has a much greater control over the record than in England, and hence probably *arose* the practice, that appears to have prevailed here at least from the year 1713, for the clerk to send up a full transcript of the proceedings under his hand only, and the seal of the court, with the writ of error annexed, *which* sufficiently gratifies the object of the writ; as much so as the practice in the Court of King's Bench on a writ of error brought in parliament; and affords as much certainty of a full and perfect transcript of the proceedings, as a return of the writ under the signature of the chief justice—the course usually pursued in the Court of Common Pleas, in relation to writs of error returnable in the King's Bench.

These preliminary questions being thus disposed of, the next presented for consideration, is whether the facts stated in the indictment, amount to an offence punishable by the laws of Maryland. This is denied on the part of the defendants in error, and much reliance is placed on the statute 33 Edward I. *de conspiratoribus*, on the supposition that the offence of conspiracy, was originally created by that statute; or if it was a common law offence, that the statute either contained a definiton of all the conspiracies that were before indictable at common law, or annulled the common law, and rendered dispunishable all conspira-

cies but such as it defines. And if either position be correct there is an end to this prosecution, since the matter charged in the indictment is clearly not embraced by the statute; and if it was, the statute being considered as not in force here, the case would not be helped; and there would be no law in this state, for the punishment of conspiracies of any description, there being no legislative provision on the subject. But neither branch of the proposition, will on examination be found to be true. The statute is in these words: "Conspirators be they that do confeder or bind themselves by oath, covenant, or other alliance, that every of them shall aid and bear the other falsely and maliciously to indict or cause to indict, or falsely to move or maintain pleas; and also such as cause children within age to appeal men of felony, whereby they are imprisoned and sore grieved; and such as retain men in the country with liveries or fees to maintain their malicious enterprises; and this extendeth as well to the takers, as to the givers. And stewards and bailiffs of great lords, which by their seignory, office, or power, undertake to bear or maintain quarrels, pleas, or debates, that concern other parties than such as touch the estate of their lords or themselves." Without looking beyond the statute itself, there may be found sufficient evidence on the face of it, to show that conspiracies were known to the law before. "Conspirators be they," &c. Now why should they have been declared to be conspirators, who should confederate for any of the purposes mentioned in the statute, if they were, not liable to punishment for such combinations? And if they were, it was for the conspiracy that they were so liable to be punished; as without the offence of conspiracy, there could have been no punishable conspirators. The statute does not prohibit conspiracies or combinations of any kind, it does not declare combinations or conspiracies of any description to be unlawful, nor does it impose a penalty, or inflict any punishment upon conspirators. And if combinations for any of the purposes mentioned in the statute, were punishable at all, it could only have been on the ground, that both the offence of conspiracy *(eo nomine,)* and the punishment, were known to the law anterior to the enactment of the statute, and that the declaring those to be conspirators, who should be engaged in certain combina-

tions, subjected them to the law of conspiracy as it then existed. And it has never been pretended, that the combinations enumerated in the statute were not indictable conspiracies. The statute therefore, which had for its object the prevention of the combinations it enumerates, carries with it internal evidence, that conspiracy was an indictable offence before. But the question, *whether conspiracies were indictable or not at common law*, anterior to the statute 33 Edward I. does not depend alone upon the construction of that statute. In 3 Coke's Institutes 143, and 1 Hawk. P. C. 193, ch. 72, sec. 9, it is said, that the *villenous* judgment is given by the common law, and not by any statute, against those convicted of a conspiracy. Now this judgment, called the villenous judgment, which was known only to the common law, could never have been given, unless conspiracy was an offence punishable at common law. In the 20th year of the reign of Edward the 1st, a civil remedy was provided against conspirators, &c. by the writ of conspiracy; and the statute 28th Edward I, ch. 10, entitled, "The remedy against conspirators, false informers and embracers of juries," makes this further provision: "In right of conspirators, false informers, and evil procurers of dozens, assises and juries, the king hath provided remedy for the plaintiffs by writ out of the chancery; notwithstanding, he willeth that his justices of the one bench and of the other, and justices assigned to take assises, when they come into the country to do their office, shall upon every plaint made unto them, award inquests thereupon without writ, and shall do right unto the plaintiffs without delay." It must be the provision in the 20th of Edward I, for the writ of conspiracy, to which the first clause of this statute has reference, as there does not appear to be any other, and which according to 2d Institutes 562, was but in affirmance of the common law; and these provisions for private remedies against conspirators, clearly demonstrate the existence of the offence of conspiracy. It is equally clear, that the statute does not embrace all the ground covered by the common law. Who doubts, or was it ever questioned, that a conspiracy to commit any felony is an indictable offence; as to rob or murder, to commit a rape, burglary or arson, &c. or a misdemeanor, as to cheat by false public tokens, &c. Indeed this has been

conceded throughout the whole of the argument in this case, and the ground mainly relied upon, on the part of the defendants in error is, that the object of the conspiracy charged in the indictment, is not of itself an indictable offence. Yet such cases of conspiracy are not made punishable by any statute, and are only indictable at common law; which could not be, if the statute 33d Edward I, either furnished a definition of all the conspiracies indictable at common law, or restricted and abridged the latter, by rendering dispunishable all such as it does not define. This statute is not prohibitory, nor is the existence of other punishable conspiracies than those which it enumerates at all repugnant to, or inconsistent with any of its provisions; and according to any known rule of construction, the common law of conspiracy such as it was before, may well stand together with the statute; for surely, the merely declaring one act to be an offence, which act as well as others, was so before in contemplation of law, cannot render those others dispunishable: nor will one act, which in law amounts to a particular offence, cease to be so, because another act is merely declared by statute (without any negative words) to amount to the same offence. The statute therefore, must be considered either as declaratory of the common law only, so far as it goes, for the purpose of removing doubts and difficulties which may have existed in relation to the conspiracies it enumerates, by giving to them a particular and definite description; or as superadding them to other classes of conspiracy already known to the law, leaving the common law, in possession of all the ground it occupied beyond the provisions of the statute. And so it has been uniformly understood in England, from the earliest down to the latest decision that is to be found on the subject; otherwise the judges could not have sustained a great proportion of the prosecutions for conspiracy, with which the books are crowded; in some of which, the objection, that the matter charged was not within the statute 33d Edward the 1st, was made and overruled, as will be hereafter shown. In the Book of Assizes, 27th Edward the 3d, ch. 44, it is said, that "inquiry shall be made concerning conspirators and confederates, who bind themselves by oath, covenant or other agreement, that each will support the enterprises of the other, whether

true or false;" and in the same book we find this notice of a criminal prosecution: "and note that two were indicted for a confederacy, each of them to maintain the other, whether the matter was true or false; and notwithstanding that nothing was alledged to have been actually done, the parties were put to answer, because it was a thing forbidden by law." If this falls within either of the provisions of the statute 33 Edward I, it can only be that which relates to the moving and maintaining pleas, and that does not embrace it; for if the indictment had been under the statute, for a confederacy "falsely to move and maintain pleas," which can only have reference to proceedings in courts of justice, it is very clear that the parties must have been acquitted, as the conspiracy was not to do that specific act; otherwise they might have been punished for what they did not contemplate, since nothing being alledged to have been done, *non constat*, that they had any intention, to move and maintain pleas within the purview of the statute; and the intention enters into the essence of every offence. The indictment however, was not under the statute, for either of the specific acts mentioned in it, but at common law for the conspiracy, which was considered *per se* a substantive offence, no act in furtherance of its being alleged, and this after, and notwithstanding the statute. The position, that "a confederacy each to maintain the other, whether the matter be true or false," is a common law offence, is distinctly adopted in 1 Hawk. P. C. 190, ch. 72, and 9 Coke's Rep. (The Poulterers' case) 56, and the principle of the case noted in the Book of Assizes, to wit, that conspiracies are punishable at common law, though nothing be put in execution, is fully recognized in the Poulterers' case, in which that book is referred to; and this further principle also laid down, that the law punishes the conspiracy, "to the end to prevent the unlawful act;" and in the same case, speaking of another, article 19, also in the Book of Assizes 138, relative to combinations among merchants to regulate the price of wool, it is said, "and in these cases, the conspiracy or confederacy (not the false conspiracy or confederacy) is punishable, although the conspiracy or confederacy be not executed." Hence it is manifest, that the "*note*" at the end of the case, which seems to be relied on to show, that

both malice and falsehood are indispensable ingredients of a punishable conspiracy, and must be united in the same case, was not intended by Lord Coke as applicable to all confederacies, but to such false conspiracies only, as are of the character of those of which he had treated immediately preceding the *nota;* for he does not speak of the case of a conspiracy between merchants to fix the price of wool, as a false conspiracy, nor does either falsehood or malice, necessarily enter into such a combination. And these combinations among merchants, (which are not within the statute 33d Edward the 1st,) were, and remained punishable at common law, and were not first made so by the statute staple 27th Edward the 3d, ch. 9, as has been supposed in argument. That statute does indeed prohibit the exportation of wool under a very severe penalty, but neither creates, nor provides a punishment for the offence of merchants, of combining to fix a price beyond which they would not go. All that is said in relation to the purchasing of that article is, that "all merchants, as well subjects as foreigners, may purchase woolfolk. &c. throughout the whole of our kingdom and territories, without covin or collusion to lower the price of the said merchandizes, so nevertheless as they bring them to the staple;" from which it would seem that all covin and collusion to lower the price of merchandize was before unlawful, and that the statute meant to leave the law as it was. In the Poulterers' case, it was clearly considered as an offence at common law; and in 4 Blk. Com. 154, the exportation of wool, which, as has been before observed, was prohibited by the statute staple, under a very heavy penalty, is said to have been forbidden at common law, but more particularly by that statute; and if that, which it was the principal object of that statute to prevent and to punish, was before, an offence at common law, it may readily be supposed, that *no* new offence was intended to be created; but that a conspiracy to fix the price of wool, was an offence at common law. Moreover, the words of the statute are "without covin or collusion to lower the price," &c. and a combination to "fix a price, beyond which they would not go," might not necessarily be to "lower" the price. On an information against Breerton, Townsend and others, Noy's Rep. 103, for the suppression of a will, to the prejudice of Egerton,

the relator, whose wife was thereby disinherited all the defendants but one, were convicted and fined. This was a case of fraud effected by a confederacy, and the injury was to an individual; the suppression of a will by one was not an indictable offence, though a fraud highly injurious to the party affected by it. It was the confederacy alone which rendered it criminal, and therefore, the information was against the offenders conjointly. In Timberly and Childe, Siderfin 68, the indictment was for a conspiracy to charge one with being the father of a bastard child, with intent to extort money from him; and on motion to quash the indictment, it was held by the court to be good. In Child vs. North and Timberly, 1 Keble 203, the indictment was for a conspiracy to deprive the prosecutor of his fame, and to extort money from him, by falsely charging him with being the father of a bastard child. There was a motion to quash the indictment, because the conspiracy as laid, was to charge the prosecutor with matter that the court had no cognizance of; which was overruled, on the ground that it *might* be a loss to the prosecutor; and it was held that the conspiracy was punishable, though the court had no cognizance of the matter of it. And in the same case in 1 Keble 254, it was moved after verdict in arrest of judgment, that the indictment only charged the parties with a conspiracy to deprive the prosecutor of his fame, and to extort money from him, and not with a conspiracy to charge him before any tribunal having cognizance of the matter of bastardy. But the motion was overruled, and judgment rendered for the king, on the *two* grounds distinctly taken, that it was a conspiracy for lucre and gain, to charge and disgrace a man with having a bastard, and that the *crime* was the conspiracy, which whether it was to defame or disgrace a man, or to charge him with heresy, was punishable at common law. In the Queen vs. Armstrong, Harrison and others, 1 Ventris 304, the defendants were indicted for conspiracy to charge (or burden) one with the keeping of a bastard child, and thereby to bring him to disgrace. After verdict there was a motion in arrest of judgment, on the ground that it did not appear, that the party was actually burdened with the keeping of a child; but on the contrary that it was alledged to be only a pretended child; and also, that the party was not

stated to have been brought before a justice of the peace on that account; but only that the defendants went and affirmed it to himself, intending to obtain money from him, that it might be no further disclosed; and that a bare unexecuted conspiracy was not a subject of indictment. The objection was overruled and the parties were punished by fine. The principle of this case cannot well be misunderstood. It was a conspiracy to extort money from an individual, by going to him, and affirming that he was the father of a bastard child, with a view of inducing him to pay them to say no more about it. And it was decided on the ground (expressly taken by the court) that it was a contrivance by *conspiracy*, to defame the person, and *cheat* him of his money, which was an indictable crime of a very heinous nature. In the Queen vs. Best and others, 2 Ld. Raym 1167, the indictment was for a conspiracy, falsely to charge the prosecutor with being the father of a bastard child, with which one Elizabeth Carter was pretended to be ensient, in order to defraud him of his money, and destroy his reputation. On demurrer it was among other things objected to the indictment, that it was not alleged, that the child was likely to become chargeable to the parish, and that it did not appear, that the prosecutor was by the accusation put in danger of being subjected to any penalty; but that it amounted only to a charge that the defendants conspired to *tell* the prosecutor, that he was the father of the child the woman was big with, and that a *bare conspiracy*, to do an *ill* act, was not indictable. But the demurrer was overruled, on the *principle* broadly laid down by the court, that the defendants being *charged* at least with a *conspiracy*, to charge the prosecutor with fornication, though that was only a spiritual defamation, yet the *conspiracy* was the gist of *indictment*, and was a temporal offence and punishable as such. The King vs Kinnersly and Moore, 1 Strange 193, was a case of conspiracy to extort money from Lord Sunderland, by charging him with an attempt to commit sodomy with one of the defendants. It was not charged as a conspiracy to accuse him in a course of justice, but only *in pais*. The object was to extort money, by means of a verbal slander, for which the party injured had his civil remedy, and the mere verbal slander by one only, would not have been in-

dictable. And The King vs. Martham Byran, 2 Strange, 866 the court in speaking with reference to The King vs. Armstrong and Harrison, say, "there the conspiracy was the crime; and an indictment will lie for that, though it be to do a lawful act." In this class of conspiracies, the meditated end was not accomplished in either of the cases. The object in each, was to defame and extort money from an individual; and the indirect or wrongful *means* by which that object was intended to be effected was verbal slander—a combination to do that, which if actually done by one alone, would not be the subject of an indictment: for if one verbally defames another, or extorts money from him, not under colour of office, it is not an indictable offence. The *conspiracy* therefore for a corrupt purpose, was the offence for which they were punished; and there is no pretence for supposing, as has been urged in argument, that the prosecutions were sustained on the ground, that the conspirators contemplated an abuse of judicial authority, by falsely accusing or causing the parties to be accused, of having bastard children, before justices of the peace having cognizance of such matters. A conspiracy of that character, would there is no doubt, have been an indictable offence, having for its object, the subjecting the party accused. to the provisions of the statutes in relation to bastardy. But that is not the nature of the conspiracy charged in either of the cases referred to. In every case the defendants were indicted for a conspiracy to defame and extort money from the prosecutor, by charging him with being the farther of a bastard child, not before justices of the peace, but the charge is laid as having been made *in pais;* and in The King vs. Timberly and North, one of the objections to the indictment was, that it did not lay the conspiracy to be, to charge the procecutor before any that had jurisdiction of the matter; and in the Queen vs. Armstrong, Harrison, and others, the same objection was raised, and also, that the defendants only went and affirmed it to the prosecutor himself; and so in the Queen vs. Best, and others, which with the exception also taken in the King vs. Timberly and North, that it was not within the statute 33 Edward I. was disregarded by the judges. "Every indictment must contain a certain description of the crime of which the defendant is accused, and a statement of the

facts by which it is constituted, so as to identify the accusation, lest the grand jury should find a bill for an offence, and the party be put upon his trial for another, without any authority." 1 Chitty's Criminal Law 169. And, "the charge must be sufficiently explicit to explain itself, for no latitude of intention can be allowed, to include any thing more than is expressed."—*Id.* 172, 2 *Burr.* 1127. And the accused is put upon his trial only for that with which he has charged, and against which alone, he is called on to defend himself. The prosecutions therefore in the cases referred to, could not have been supported on the ground that the defendants contemplated an abuse of judicial power, by falsely accusing the prosecutors before justices of the peace; for no matter what they contemplated, that was not what they were charged with, and if they were only punishable on that ground, as the judges could not by intendment, have supplied what was not expressed, the indictment must have been quashed, or the judgments arrested for want of sufficient matter in law (which was brought fully under the consideration of the courts,) otherwise it would have been, to punish the defendants for what they were not convicted for they could only have been convicted of what was alledged against them in the indictments. And thus the singular picture would have been exhibited in criminal jurisprudence, of men *convicted* of what was no offence in law, and *punished* for what they were neither convicted nor accused of, and for any thing appearing might never have contemplated; but such a stain is not to be found on any page of juridical history. It is not possible to suppose that in either of the cases, the judges went on the ground, that the defendants had accused, or meditated the accusation of the prosecutor before those who had jurisdiction of the matter; on the contrary the idea is expressly negatived by the proceedings themselves. The absence of the allegation was urged in each case, as an objection to the indictment, and the court decided, not that it might be inferred from what was alleged, but that it was not necessary, and that the conspiracy alone to defame and extort money from an indvidual, without any abuse, or meditated abuse of judicial power, was *per se* an indictable offence at common law. If they had not stated the grounds on which they acted, then indeed any legal principle that could be extracted

from the cases, might, in support of the decisions, properly be assumed as the ground on which they were given. But the ground that is here attempted to be assumed, as that on which the conspirators were punishable, is not only different from that, on which the judges expressly place their decisions, but is an illegal ground, and one on which the indictments could not have been supported. Illegal, not because a conspiracy to accuse a man of being the father of a bastard child before those who had cognizance of such matters, was not an indictable offence, but because it was, what was not charged in the indictments, and could not legally be *inferred* from what was expressed. To say therefore, that those conspiracies were indictable, or that the prosecutions were sustained only on the ground, that the conspirators meditated the abuse of judicial power, by falsely accusing the prosecutors before a tribunal having cognizance of such offence, would be to overturn altogether the authority of the cases, which has not been attempted; on the contrary their authority seems to be admitted, and their application only to the case under consideration is resisted, on the hypothesis, that they were decided on grounds not appearing in the indictments, and entirely different from those on which the judges professed to act. But the fallacy of the argument becomes obvious, when it is seen, that without a violation of the principle, that "every indictment must contain a certain description of the crime of which the defendant is accused, and a statement of the facts, by which it is constituted," the indictments in those cases, could not have been sustained upon the grounds on which the decisions are attempted to be placed Those cases therefore must stand or fall on the grounds upon which they are placed by the judges, who decided them, not the *reasoning* of the judges, but the *principles* on which their decisions are made to rest. The King vs. Parsons, and others, 1 Blk Rep. 392, was a conspiracy to take away the character of an individual, and accuse him of murder, by means of a mere phantom, which could have no reality—pretended communications with a ghost; and the actual fact of conspiring, was left to the jury to be collected from all the circumstances. The only object of the conspiracy in that case, was to injure the man's reputation. And in the King vs. Rispal, 1 Blk. Rep. 368, 3 Burr. 1320.

which was a prosecution for a conspiracy to extort money from an individual, by charging him generally with having taking a quantity of human hair out of a bag; on the objection being raised to the indictment, that the defendants were not charged with having conspired to fix any crime on the party, but only generally with taking the hair, which might be lawful, it was said by Lord Mansfield, the other judges concurring, "the crime laid, is an unlawful conspiracy; this, whether it be to charge a man with criminal acts, or such only as may *affect* his reputation, is fully sufficient." That case if received as authority, settles this principle, that a conspiracy to defraud another by verbal scandal is equally indictable, whether it be to charge the party with a crime, or only to injure his standing in society, and is a full answer to the argument that the principle of the cases last referred to, is not applicable to this, because they are of conspiracies to fix punishable offences upon the parties. In the King vs. Skirret, and others, 1 Siderfin 312, the defendants were prosecuted for reading a release to an illiterate man, in other words than those in which it was written, by which he was induced to sign it. It does not appear by the short report of the case, what the form of the indictment was, but as it was against them conjointly, they must have been charged either with conspiracy or combination. The fraud was practised upon an individual, and if it had been perpetrated by one *only*, would not have been an indictable cheat. It was the combination therefore alone which made it criminal, and that too is a case not within the statute 33 Edward I. In the Queen vs. Mackarty and Fordenbourgh, 2 Ld. Raym. 1179. 2 East's C. L. 823, the defendants were conjointly indicted, for falsely and deceitfully bargaining and exchanging with another, a quantity of pretended wine, alledging it to be good new Lisbon wine, for a certain quantity of hats, which were exchanged and delivered by the party practised upon, on the faith of their false representations, when in fact the pretended Lisbon wine, was not Lisbon wine. The indictment in this case was not under the statute 33 Henry 8th, ch. 1, which prohibits cheating by "means of false privy tokens, and counterfeit letters in other men's names;" nor the statute 30 Geo. II, ch. 24, which provides, under heavy penalties, against cheating by "false pre-

tences," (and which was passed long afterwards,) but was for a cheat at common law, and though it did not charge the defendants with a conspiracy *eo nomine*, yet it charged that they together, did the act imputed to them; and as there were no false public tokens, which were necessary at common law, to constitute a cheat effected by *one* an indictable offence, it was the combination alone on which the prosecution could have been sustained. A cheat perpetrated by the use of false public tokens, such as false weights and measures, is an indictable crime at common law, *only* because they are means calculated to deceive, and are such, as common care and prudence are not sufficient to guard against; and so, as ordinary care and prudence are no safeguard against the machinations of conspirators, cheats effected by conspiracy are punishable at common law, for "*pari ratione, eadem est lex.*" And in the King vs. Wheatly, 2 Burr. 1127, cheats effected by conspiracy, are expressly placed on the same footing with cheats effected by false weights and measures. In the Queen vs. Orbell, 6 Mod. 42, the indictment was for a combination to cheat one J. S. of his money, by getting him to bet a certain sum on a foot race, and prevailing on the party to run booty; and the court sustained the indictment on the ground as they said, that "being a cheat, though it was private in the particular, yet it was public in its consequence." That was a case emphatically of individual injury, and as little connected with any public concernment, as any private transaction could well be, and it was the combination alone on which the prosecution rested; for such a cheat practised by *one*, was clearly not an indictable offence. In the King vs. Edwards and others, 8 Mod. 320, the parties were indicted for giving money to a man, to marry a poor helpless woman who was an inhabitant of the parish of B. and incapable of marriage, on purpose to gain a settlement for her in the parish of A. where the man was settled. In that case there was a motion to quash the indictment, on the ground that it was not unlawful to marry a woman and give her a portion. But the object of the conspiracy, being to impose a pauper on a parish to which she did not belong, it was held by the court to be an indictable offence at common law, for that a bare conspiracy to do a *lawful* act to an *unlawful* end, was a

crime, though no act should be done in consequence thereof. The conspirators certainly meditated a fraud on the *inhabitants* of a particular parish, by burdening them with the support of a pauper belonging to a different parish, and so far perhaps it may be viewed as a case of contemplated private fraud, as the inhabitants of a *parish* are not the community at large. But whether the principle laid down by the court, was on the point of meditated individual injury or violation of public police, does not appear from the report of the case. In 3 Chitty on Criminal Law, it is treated as a conspiracy to violate public police; but the principle equally applies to both. In the King vs. Cope and others, 1 Strange 144, the prosecution was for a conspiracy to ruin the trade of the prosecutor, who was a cardmaker to the king, by bribing his apprentices to put grease into the paste, by which the cards were spoiled. The putting grease into the paste, and thereby spoiling the cards, if done by *one*, would have been no crime in law, but a private injury, for which the party would have been left to his civil remedy; and it was the conspiracy alone which constituted the offence. And in the King vs. Eccles, 1 Leach's Crown Cases, 274, the indictment was for a conspiracy, by wrongful and indirect means to impoverish one Booth, a tailor, and to deprive and hinder him from following and exercising his trade. In the first count in the indictment, the object of the conspirators was alledged to have been accomplished, and in the second count the conspiracy only, was charged. It was not denied that the conspiracy was an indictable offence, and the only objection on the part of the defendant was, that the *acts* done to impoverish Booth, ought to have been set out in the indictment. But it was decided by the whole court, that it was sufficient to allege the conspiracy and the object of it, the illegal combination being the gist of the offence; and that it was not necessary to state the means, by which the intended mischief was effected; for that the *offence* did not consist in doing the acts by which the end was accomplished, (for they might be perfectly indifferent,) but in the conspiring with a view to effect the intended mischief by any means; and by Buller, justice, that "the means were only matters of evidence to prove the charge, and not the crime itself." It has been contended

that these last cases were conspiracies to injure public trade; the distinguished judges before whom they were tried have not said so, nor could they have so considered them. They were not so laid in the indictments, but were distinctly cases in which the meditated injuries were levelled against particular individuals, unconnected with any matter of public concernment, and do not fall within the principles of any of the enumerated offences against public trade, which are offences committed by traders or dealers themselves, such as cheating, forestalling, regrating, &c. So in the King vs. Leigh and others, (Macklin's case,) 2 Macklin's Life 217, in which it was held, that an indictment would lie for a conspiracy to impoverish an actor, by driving or hissing him off the stage: and in Clifford vs. Brandon, 2 Campb. 358, it was said by Sir James Mansfield, that "though the audience had a right to express by applause or hisses their sensations at the moment, yet if a body of men were to go to the theatre, with a settled intention of hissing an actor, or even of damning a piece, there could be no doubt that such a *deliberate preconcerted scheme* would amount to a conspiracy, and that the persons concerned in it might be brought to punishment." There the *preconcerted scheme* alone, the *unexecuted conspiracy* was held to be indictable; but if put into execution, according to circumstances, it would be a riot. In the King vs. Robinson and Taylor, 1 Leach's Crown Cases 37, the defendants were indicted for a conspiracy to raise a specious title in Mary Robinson to the estate of Richard Holland, by marrying Taylor, under the assumed name of Richard Holland! The only evidence in the case was of the marriage, and that she lived with Holland as a kind of servant. It was distinctly admitted, that a conspiracy to do an injury to the person or estate of another was an indictable offence, and so held by the court, Willes, Foster and Reynolds, presiding; and it was also ruled, there being no positive proof of an intention to injure Holland, that it was not necessary to prove any direct or immediate injury, or even to show any specific overt act of conspiracy, but that it was the province of the jury to collect from all the circumstances of the case, whether there was not an intention or design in the parties to do a future injury to Holland. And that case would seem to cover all the ground necessary to

support this prosecution. The conspiracy was levelled at the property or estate of another, and the object was to defraud an individual, but the act by which the fraud was intended to be accomplished, (a marriage under an assumed name) was not in itself unlawful. It has been ingeniously argued here, but not ventured on by those who conducted the defence of Robinson and Taylor, that they meditated a perversion of the course of justice, as her right could only have been established by judicial proceedings. It was not so charged in the indictment, and without it, the prosecution must have failed, if it had been deemed at all necessary to constitute the offence; for "no latitude of intention can be allowed to include any thing more than is expressed in an *indictment*," as has been before observed on the authority of Lord Mansfield, in the case of the King vs. Wheatly, 2 Burr. 1127, and 1 Chitty's Criminal Law, 127. In the King vs. Lara, 6 T. R. 565, it was admitted by counsel in argument, that a fraud upon an individual, by conspiracy was indictable, and the doctrine laid down by the judges in the King vs. Wheatly, was fully recognized and adopted by Lord Kenyon; that is, that a cheat effected by conspiracy, was an indictable offence. The case of the King vs. Berenger, 3 Maule and Selwyn, 68, as it is understood by the court, is a very strong one. The indictment was for a conspiracy by false rumours to raise the price of the public government funds, with intent to injure *such* of the King's subjects as should purchase on a particular day. It was broadly admitted in argument, that if the indictment had stated, "that the defendants conspired to raise the price of the funds in order to cheat or prejudice particular individuals by name, or to benefit themselves at their expense, or that the public were concerned in the purchases of that day, and the defendants conspired, &c. to the prejudice of the public, it would have exhibited a complete offence." But it was contended, that the allegation, that it was with intent to injure "such of the King's subjects as should purchase on that day," was too general, and for that reason, the indictment was objected to. But the objection was overruled by the court, not on the ground, that to constitute an indictable conspiracy, it should be levelled either at the public in its aggregate capacity, or at a *class* or *por-*

tion of the subjects, as distinguished from an individual; for it was treated throughout as perfectly clear, that if it had been laid with intent to prejudice or defraud either the public, or an individual or individuals by name, it would have been good; and the only difficulty on that part of the case was, whether, being laid with intent to injure *those who* might become purchasers, and not either an individual by name, or the public in its aggregate capacity, the generality of the charge did not vitiate the indictment. But they sustained the indictment *ex necessitate rei*, on the ground, that as it was impossible the defendants could have known who would be the purchasers on that day, the charge could not have been more specific. And though it was conceded, that to raise or lower the price of the public funds, was not *per se* a crime, yet it was held to be an offence, for a number of persons to conspire to raise them by false rumours; and that the *crime* was not in raising the funds, but in the act of conspiracy and combination to do so, and would be complete, though it should not be pursued to its consequences. It was clearly therefore, on the point of individual injury that the court went. And so in the King vs. Gill and Henry, 2 Barnwell and Alderson, 204, the defendants were indicted and convicted of a conspiracy by divers false pretences, and subtile means and divices, to cheat several individuals by name. The prosecution in that case, could not have been sustained on the ground, as has been supposed, that it was for a conspiracy to commit an offence, indictable of itself under the statute 30 George II. against cheating by false pretences; for it is well settled that in an indictment framed upon that statute, it is not enough to allege generally, that the cheat was effected by divers false pretences, &c. but the particular false pretences must be stated, that the party may know against what he is to defend himself, and that the court may see that there is an indictable offence charged, as there are some pretences which are not within the statute. 2 T. R. 586. East's Crown Law, 837. So in an indictment at common law for cheating by false tokens, and so also in an indictment on the statute 33 Henry VIII, against cheating by false privy tokens, &c 3 Chitty's Criminal Law, 999. 2 Strange 1127. If then the *conspiracy* in that case was only indictable, because it was to

commit the statutory offence of cheating by false pretences, as they would form the principal ingredient of the offence, it would have been necessary to set out the particular false pretences, by which the cheat was intended to be effected, in order to show that it was the statutory offence, which the conspirators intended to commit—on the acknowledged principle, that every indictment must contain a certain description of the crime of which the defendant is accused, and a statement of the facts by which it is constituted. But it was there ruled by the court, that when several persons have once agreed to cheat a particular individual of his money, although they may not at the time, have fixed on any particular means for that purpose, the offence of conspiracy is complete, and that it was sufficient to state the conspiracy and the object of it in the indictment, without setting out the means by which it was intended to be accomplished, and per Lord Mansfield, in the case of the King vs. Eccles, "they may be perfectly indifferent." It is evident therefore that the indictment was not supported on the ground that it was a conspiracy to commit an indictable offence, for if it had not been for a *conspiracy* to cheat, but against an *individual*, for the actual commission of the offence, it would have been bad for the generality of the allegation; and the principles of that case embrace every thing that is necessary to the support of the indictment against these defendants. *The case of the King vs. Mawbay and others*, 6 T. R. 619, was a conspiracy to pervert the course of justice, which is of itself an indictable offence. That case has no other bearing on the present, than as it shows that all indictable conspiracies, are not embraced by the statute 33 Edward I, but that at commmon law a conspiracy to do any thing which the law forbids is indictable. In the King vs. The Journeymen Tailors of Cambridge, 8 Mod. 10. recognized in 6 T. R. 636, the defendants were indicted at common law, and not on the statute of George, for a conspiracy to raise their wages; and it was held, that the conspiracy was indictable at common law, though it would have been lawful for either of them to raise his wages if he could. So in the king vs. Delaval, 3 Burr. 1434, which was a conspiracy to place a girl by her own consent in the hands of Delaval for the purpose of prostitution. The act of seduction was not of itself

an indictable offence, but it was the *end*, the immoral object of the *conspiracy*, which gave it its criminal character. And the case of the King vs Lord Grey is of a similar description. In 1 Hawk. P. C. 190, ch. 72, it is said, "there can be no doubt, that all combinations whatsoever, wrongfully to prejudice a third person, are highly criminal at common law." This is literally adopted and transcribed into 1 Burn's Justice 378, and 3 Wilson's Works 118. Chitty in his 3 Vol. on Criminal Law, 1139, says, "in a word, all confederacies wrongfully to prejudice another, are misdemeanors at common law, whether the intention is to injure his property, his person or his character," and in 4 Blk. Com. 137, (Christian's note 4,) "every confederacy to injure individuals, or to do acts which are unlawful, or prejudicial to the community, is a conspiracy." The concurring testimony of these writers, that, all conspiracies wrongfully to injure a third person are indictable offences, is not lightly to be received, though the positions laid down, are not assumed as full and definite descriptions of the crime of conspiracy; yet they go quite far enough for all the purposes of this prosecution. Indeed the four first were only treating of conspiracies levelled against individuals. And such is the character of conspiracy, so ramified is it in its nature, the object and tendency of it being that from which it derives its criminality, that it would be exceedingly difficult to give a single specific definition of the offence. But by a course of decision running through a space of more than four hundred years, from the reign of Edward the IIId to the 59th of George the IIId, without a single conflicting adjudication, these points are clearly settled—

1st. That the offence of conspiracy is of common law origin, and not restricted or abridged by the statute 33 Edward I.

2d. That a conspiracy to do any act that is criminal *per se*, is an indictable offence at common law, for which it can scarcely be necessary to offer any authority.

3d. That an indictment will lie at common law—1st. For a conspiracy to do an act not illegal, nor punishable if done by an individual, but immoral only—as in the King vs. Lord Grey and others, and the case of Sir Francis Blake Delaval. 2d. For a conspiracy to do an act neither illegal nor immoral in an

individual, but to effect a purpose, which has a tendency to prejudice the public—as in the King vs. the Journeymen Tailors of Cambridge, for a conspiracy to raise their wages, either of whom might legally have done so, and the King vs. Edwards and others. 3d. For a conspiracy to extort money from another, or to injure his reputation by means not indictable if practised by an individual, as by verbal defamation, and that whether it be to charge him with an indictable offence or not—as in Timberly and Childe; Child vs. North and Timberly; the Queen vs. Armstrong, Harrison and others; the Queen vs. Best and others; the King vs. Kinnersly and Moore; the Queen vs. Martham Brien; the King vs. Parsons and others, and the King vs. Rispal. 4th. For a conspiracy to cheat and defraud a third person, *accomplished* by means of an *act* which would not in law *amount* to an indictable cheat, if effected by an individual—as in Breerton and Townsend; the King vs. Skirrett and others; the Queen vs. Macarty and Fordenbourgh; the Queen vs. Orbell; the King vs. Wheatly, and the King vs. Lara. 5th. For a malicious conspiracy, to impoverish or ruin a third person in his trade or profession—as in the King vs. Cope and others; the King vs. Eccles; the King vs. Leigh and others, (Macklin's case.) and the case of Clifford vs. Brandon. 6th. For a conspiracy to defraud a third person by means of an act not *per se* unlawful, and though no person be thereby injured—as in the King vs. Robinson & Taylor; the King vs. Berenger and others, and the King vs. Edwards and others. 7th. For a bare conspiracy to cheat or defraud a third person, though the means of effecting it should not be determined on at the time—as in the King vs. Gill and Henry. 8th. That a conspiracy is a substantive offence, and punishable at common law, though nothing be done in execution of it—as in the Book of Assizes, ch. 44; the Poulterers' case; the King vs. Edwards and others; the King vs. Eccles; the King vs. Berenger and others, and the King vs. Gill and Henry; and all the authorities that the conspiracy is the gist of the offence. And 9th. That in a prosecution for a conspiracy, it is sufficient to state in the indictment, the conspiracy and the object of it; and that the means by which it was intended to be accomplished need not be set out, being only matters of evidence to prove the

charge, and not the crime itself, and may be perfectly indifferent—as in the King vs. Eccles, and the King vs. Gill and Henry.

From all which it results, that every conspiracy to do an unlawful act, or to do a lawful act for an illegal, fraudulent, malicious or corrupt purpose, or for a purpose which has a tendency to prejudice the public in general, is at common law an indictable offence, though nothing be done in execution of it, and no matter by what means the conspiracy was intended to be effected; which may be perfectly indifferent, and makes no ingredient of the crime, and therefore need not be stated in the indictment. In 1 Tremaine's P. C. 82, 83, there is an information against Turner and others, for a conspiracy to destroy the reputation of one George Green, and falsely to charge him with adultery with the wife of one of the conspirators, for the purpose of extorting money from him. In 86, against Record and others, for a cheat practised on Lady Dorothea Seymour, in prevailing on her by means of a falsehood, to advance large sums of money to them. In 91, against Wilcox and others, for cheating by conspiracy one John Dutton of a quantity of cloth, under pretence of buying them. In 94, against Taydler and others, for a cheat by conspiracy, in drawing an absolute conveyance to themselves of the estates of two women, and persuading them to execute it, pretending it was only in trust for the women, &c And in 97, against Allibone and others, for cheating by conspiracy, one Hilliard, in obtaining divers bonds from him for the payment of money to themselves and others, as a consideration for procuring a marriage between him and an indigent woman whom they represented as being rich. In neither of those cases, could an indictment have been sustained for the same injury practised by an individual, without the aid of conspiracy or combination; and as Tremaine gives the terms, the reigns, and the names of the respective parties, there can be little doubt, that they are precedents of information in adjudicated cases, and that they were held to be good; and they go far to show how the common law was understood in England in the reigns of Charles and James the IId And the law of conspiracy, as settled by the uniform tenor of the decisions of the courts in England, has

been recognized and adopted as the common law, by the courts of several of the sister states; as in the Commonwealth vs. Ward and others, 1 Mass. Rep. 473. The Commonwealth vs. Judd and others, 2 Mass. Rep. 329; and the Commonwealth vs. Tibbitts and Tibbitts, *ibid* 536; and the cases of the Journeymen Cordwainers in New-York and Pennsylvania; and also in a similar case in this state, by the court of oyer and terminer, &c. for Baltimore county, which has it is believed, been entirely acquiesced in. In 2 East's C. L. title Cheat—cheats by conspiracy are *treated of*, as being on the same *footing* with cheats effected by the use of public false tokens, as false weights and measures. Chitty in his 3 vol. title Conspiracy, after speaking of indictable conspiracies levelled at individuals, says, "but the object of conspiracy, is not confined to an immediate wrong to particular individuals, it may be to injure public trade, to affect public health, to violate public police, to insult public justice, or to do any act in itself illegal." Thus taking a clear distinction between indictable combinations to *injure* individuals, and such as have for their object an injury to the public at large, or the commission of acts which are in themselves illegal. And in page 1140 he says, "that to constitute a conspiracy, it is not necessary that the act intended should be in itself illegal, or even immoral; that it should affect the public at large; or that it should be accomplished by false pretences." Conspiracies are odious in law, and are always taken *mala parte*, and properly. In the King vs, Rispal, it was said by Lord Mansfield in delivering the opinion of the court, that "they tended to a breach of the peace, as much as cheats or libels." That is the only reason assigned in the books why libels are punishable by indictment; and whether they have in fact a more direct tendency to a breach of the peace, than verbal slanders, which are not *per se* so punishable, it is now too late to inquire—the law is settled, whether the reason be good or bad. There is however a greater malignity of spirit displayed, and a deeper and more lasting mischief contemplated by a deliberately written libel, than by a mere verbal slander, which is often repented of almost as soon as it is uttered. Libels therefore furnish evidence of a disposition more dangerous to the social order, than verbal slanders, against the

effect of which, the law has interposed itself, as a necessary safeguard. So at common law, a cheat effected by public false tokens, as "false weights and measures," is punished *criminaliter*, not because the party cheated, is more injured in that way, than by a mere private cheat accomplished by an individual in any other manner, which is not indictable; but because it is *that*, against which ordinary care and prudence are not sufficient to guard, and the *use* of which, evinces a disposition to practise upon the whole community. And for the same reason, fraudulent, false or malicious conspiracies to cheat or otherwise injure a third person, are indictable offences; for, that ordinary care and prudence, which would be a sufficient guard against the evil designs of an individual, furnish no protection against the machinations of a *band of conspirators*; *The King vs. Turner and* others, 13 East 228, has been much relied upon by the counsel for the defendants in error, but the case itself is not at all in hostility with this principle, or with any of the adjudications to which we have had occasion to advert. It was an agreement only, (in the words of Lord Ellenborough by whom it was decided) "to go and sport upon another's ground;" not tinctured either with malice, falsehood or fraud. And an agreement to commit a civil trespass, (for every unauthorised entry upon the possessions of another, though it only be for the purpose of innocent amusement, is in law a trespass) may not, according to circumstances, amount to an indictable offence. But fraud, falsehood and malice, strike at the very root of the social order, as the well being of a community greatly depends on the honesty, truth, and properly regulated passions of those who compose it; and therefore it is necessary, that the law should punish them whenever they assume a shape, against the effect of which ordinary care and prudence are not sufficient to guard.

There is nothing in the objection, that to punish a conspiracy where the end is not accomplished, would be to punish a mere unexecuted intention. It is not the bare intention, that the law punishes, but the *act of conspiring*, which is made a substantive offence, by the nature of the object intended to be effected. And in that respect, conspiracies are analogous to unlawful assemblies. An unlawful assembly, is the assembling of three or

more together to do an unlawful act, as to pull down enclosures, and departing without doing it, or making any motion towards it. In that case it is not the bare *unexecuted intention* which the law punishes, but it is the *act of meeting*, connected with the *object* of that meeting, which constitutes the offence; and for that *act of meeting* alone, though it should be to do, what if actually done by one, as the pulling down of another's enclosures, (which would be but a civil trespass,) the parties are liable to be punished by fine and imprisonment. And why should the law favour the *act of conspiring* together, falsely to injure the reputation of another, maliciously to ruin him in his occupation, or fraudulently to cheat him of his property, (no matter by what means,) and yet punish the *act of meeting* together to pull down another's fence, without making any motion towards it?

But it is contended, that if our ancestors brought with them the common law of the mother country, or any part of it, it was the common law so far only as it had been established by judicial precedents, at the time of their emigration, and not as it has since been expanded in England by judicial decisions. That our ancestors did bring with them the laws of the mother country, so far at least as they were applicable to their situation, and the condition of an infant colony, cannot be seriously questioned. The rule that "in conquered or ceded countries that have laws of their own, those laws continue in force, until actually altered," &c. is for the benefit and convenience of the conquered, who submit to the government of the conquerors, or in the case of cession of the people, who by *treaty* submit to the government of those to whom their country is ceded, and was not applicable to the condition of our ancestors, as the *Indians* did not submit to their government, but withdrew themselves from the territory they acquired, They were therefore in the predicament of a people discovering and planting an uninhabited country; and as they brought with them all the rights and privileges of native Englishmen, they consequently brought with them also, as their birthright, all the laws of England, which were necessay to the preservation and protection of those rights and privileges. And it would be difficult to show, that the law of conspiracy was not, at the time of their emigration, quite as necessary to them here

in their new and colonial condition as it was in England, unless it can also be shown, that there was less necessity here, than there, for the preservation of life, liberty, reputation and property, or protection against falsehood, malice and fraud. If then they did bring with them the common law of conspiracy, which is assumed as undeniable, (though it may have existed potentially only,) they brought it as it is now settled and known in England; for what it is now, it was then, if any reliance can be had on ancient authorities; and it is to judicial decisions, that we are to look, not for the common law itself, which is no where to be found, but for the evidences of it. It appears, as has been seen by a note of a case in the Book of Assizes, 27th Edward III, that an indictment was sustained at common law for a conspiracy, though nothing was done in execution of it. The same principal is recognized and adopted in 9 Coke's Rep, 56, (The Poulterers' case,) in its fullest extent; and that is the great principle running through the cases so much objected to in argument, that conspiracies are substantive punishable offences, though they be not executed; and the rest, that it is sufficient to state in the indictment the conspiracy and the object of it, that the means by which it was intended to be effected, are but matters of evidence to prove the charge, and no part of the crime itself, and may be perfectly indifferent, and need not therefore be set out, are but consequences. And in the case of Breerton and townsend, Noy's Rep. 163. (12 James I.) and indictment was held to lie, as has been seen, for a conspiracy to defraud another by means of an act, which if it had been effected by an individual, would not have been indictable. The case in Noy, in which the parties were punished by *fine*, also shows, that the villenous judgment was not given in all cases of conspiracy, but that there were at common law, different degrees of punishment, and consequently of crime; and in 1 Hawk. P. C. 193, ch. 72, S. 9, it is said, that it has never been settled to be the proper judgment upon any conviction of conspiracy, except such as threatened the life of the party, which obviates any argument drawn from the villenous judgment, against there being any other conspiracies at common law than those enumerated in the statute 33 Edward I. These cases were before the colonization, the charter being in the eighth

year of the reign of Charles the 1st. and they furnish the leading principles of the doctrine of conspiracy, of which the subsequent decisions are but practical applications, and must be received as expositions of the law as it before existed, and not as creating a new law, or altering the old one, which could only be done by legislative enactment; and cannot be assimilated to occassional alterations or changes in the practice of courts, in relation to the forms of proceeding, which are only creatures of courts, and often go on mere fiction. And it is a mistake to suppose, that they are *expansions* of the common law, which is a system of principles not capable of expansion; but always existing, and attaching to whatever particular matter or circumstances may arise and come within the one or the other of them; not that this or that combination, is by the common law in terms declared to be an indictable conspiracy, but that it falls within those principles of the common law, which have for their object the preservation of the social order, in the punishing such combinations as are calculated to threaten its well being. Precedents therefore do not constitute the common law, but serve only to illustrate principles. And if there were no other adjudications on the subject to be found, the judicial decisions since the colonization, furnish conclusive evidence, not only of what is now *understood to be* the law of conspiracy in England, so far as those decisions go, but of what were always the principles on which that law rests. And if the political connection between this and the mother country had never been dissolved, the expression of a doubt would not now be hazarded on the question, whether the same law was in force here. And unlike a positive or statute law; the occasion or necessity for which may long since have passed away, if there has been no necessity before, for instituting a prosecution for conspiracy, no argument can be drawn from the *non user;* for resting on *principles*, which cannot become obsolete, it has always potentially existed, to be applied as occasion should arise. If there had never been in Maryland, since the original settlement of the colony by our ancestors, a prosecution for murder, arson, assault and battery, libel, with many other common law offences, and consequently no judicial adoption of either of those branches of the common law, could it therefore be con-

tended, that there was now no law in the state for the punishment of such offences? The third section of the Bill of Rights, which declares "that the inhabitants of Maryland are entitled to the common law of England, and the trial by jury according to the course of that law, and to the benefit of *such* of the English statutes, as existed at the time of their first emigration, and which by experience, have been found applicable to their local and other circumstances, and of such others as have been since made in England or Great Britain, and have been introduced, used and practised by the courts of law or equity," has no reference to adjudications in England anterior to the colonization, or to judicial adoptions here, of any part of the common law, during the continuance of the colonial government, but to the common law in mass, as it existed here, either potentially, or practically, and as it prevailed in England at that time, except such portions of it, as are inconsistent with the spirit of that instrument, and the nature of our new political institutions. And surely it cannot be inconsistent with, or repugnant to the spirit and principles of republican institutions, whose strength lies in the virtue and integrity of the citizen, to correct the morals and protect the reputation, rights and property of individuals, by punishing corrupt combinations, falsely to rob another of his reputation, maliciously to ruin him in his business, or fraudulently to cheat him of his property. If it is, the law of libel, and for punishing cheats effected by public false tokens, should also be rejected; for the one is not more inconsistent with the personal liberty of the citizen than the other, or at all more necessary to the preservation of the social order, and they all rest upon the same principle. And that clause in the third section of the Bill of Rights, which declares the inhabitants of Maryland to be entitled to the benefit of such British statutes made since the emigration, as had been introduced, used and practised by the courts of law or equity, and thus virtually inhibits the use of all such as had not been so introduced, furnishes a clear exposition of the whole section, and shows, that it was not the intention of the framers of that instrument, to exclude any part of the common law, merely because it had not been introduced and used in the courts here, and strongly implies, that there were portions of that

valuable system, which had not been actually practised upon. And the judicial proceedings of our courts furnish no evidence of any prosecution before the revolution, for a cheat effected by public false tokens; and yet it is not pretended, *that from the non user*, it is not now an indictable offence.

It is not necessary, as has been contended on the part of the defendants in error, that every one should in fact know what the law is, before he can be punished for what the law forbids. Such a doctrine would be fraught with the most mischievous consequences to society: it is enough that the *offence* was known to the *law* before, and if it be *malum in se*, there is an inward monitor, always present, to warn, advise and instruct. Nor is it any argument against the law of conspiracy, as contended for on the part of the prosecution, that under the English decisions, the *act* of conspiring, is not required to be proved by positive testimony, but may be inferred by the jury from all the circumstances of the case. It has nothing to do with the question of what is, or is not an indictable conspiracy; and if it be an objection at all, it is one that arises upon the law of evidence, and is equally applicable to every description of conspiracy. But we cannot perceive what there is in it to quarrel with. It is not confined to the offence of conspiracy—Murder, which reaches the life of the offender, and various other crimes, may be proved by circumstantial evidence; and there does not seem to be any thing in the crime of conspiracy, that should exempt it from being proved by the same species of evidence. On the contrary, as conspiracies from their very nature, are usually entered into in secret, and are consequently difficult to be reached by positive testimony, it would appear to be peculiarly necessary and proper to permit them to be inferred from circumstances, otherwise the most dangerous and injurious conspiracies would often go unpunished. I have endeavoured to avoid bringing any thing into this case, which does not strictly belong to it, or assuming any principle that is not well settled. The indictment has two counts, the *first* charges the defendants with an executed conspiracy, falsely, fraudulently and unlawfully, by wrongful and indirect means to cheat, defraud and impoverish the President, Directors and Company of the Bank of the United States; and the second,

charges them with a conspiracy only, falsely, fraudulently and unlawfully, by wrongful and indirect means, to cheat, defraud and impoverish the President, Directors and Company of the Bank of the United States. *James A. Buchanan*, one of the defendants, was the President of the Office of Discount and Deposit of the mother bank, duly established in Baltimore; *James W. M'Culloh*, another of the defendants, was the Cashier of that office, and *George Williams*, the other defendant, was a director of the mother bank in the city of Philadelphia; and it has been contended, that as an improper use, or embezzlement of the funds of the bank, by either the President or Cashier of the office, would in law be only a breach of trust, a *combination* to effect the same purpose cannot amount to an indictable offence. But however ingeniously urged, there does not appear to be any thing in the argument, when stripped of the dazzling attire in which it was clothed. Seeing, as has been shown, that to constitute an indictable conspiracy, it is not necessary that the act conspired to be done, should if effected by an individual, be such, as would *per se* amount to an indictable offence. It seems therefore to be perfectly clear, both on principle and authority, that the matter charged in each count in the indictment, constitutes a punishable conspiracy at common law, and that, that portion of the common law is in force in this state.

The only question remaining to be examined, that is, whether under the constitution and laws of the United States, the county court of Harford had jurisdiction of the offence, in this particular case, the Bank of the United States, being chartered by an act of Congress, requires but little to be said, and will be disposed of in a few words. A conspiracy to cheat or defraud the bank, is not declared to be an offence against the United States, by any act of Congress, and in the case of the United States vs. Hudson and Goodwin, 7 Cranch 32, it was decided by the Supreme Court, that the courts of the United States had no common law jurisdiction in criminal cases. The authority of which case is recognized in the case of the United States vs. Coolidge and others, 1 Wheaton 415, and until it shall be overruled by the same tribunal, the principle must be considered as settled. The matter therefore charged in the indictment is not an offence

against the United States, nor cognizable in any of their courts; but a common law offence against the state of Maryland—the act of Congress creating the bank, and the establishment of the office of discount and deposit in the city of Baltimore within the territorial jurisdiction of the state, furnishing only the occasion for the offence, by bringing into existence the thing, upon which the fraud is charged to have been committed. And as the pre-previously vested jurisdiction of the state, cannot be supposed to be taken away, by the mere potential right of Congress (supposing it to exist) to make a conspiracy to cheat the bank, an offence against the United States, and to give exclusive jurisdiction thereof to the United States courts, without any exercise of that right, the original common law jurisdiction of the courts of the state, in relation to this subject, remains as it was before the adoption of the Federal Constitution, and will so continue to remain, until that right shall be exercised by Congress to its exclusion. Whether a concurrent jurisdiction would be denied to the courts of the state, if Congress had in fact vested jurisdiction of this matter in the courts of the United States, it is not now necessary to inquire, the exclusive jurisdiction being in the courts of the state. It will be time enough to examine that question when it shall be regularly presented to us.

It has been urged on the part of the defendants in error, as an objection to the jurisdiction of the courts of the state, in such a case as this, that the principle would be dangerous to the well being of the bank, as it might lead to the passing of laws by the state legislature, calculated to destroy the institution, under pretence of protecting its interests. It may be admitted, that the legislature of the state has no right to pass laws calculated to control or impede the operations of the bank. But it is difficult to imagine, how a general power in the judicial tribunals of the state, to punish an offence against the state, can be considered as an unconstitutional interference with the concerns of the bank of the United States, or as in any manner endangering its security, only because its officers happen to be the objects of the prosecution, and the offence is charged to be, to the prejudice of that institution; which for the purpose of the prosecution is considered as an individual.

JUDGMENT REVERSED and PROCEDENDO AWARDED to the County Court of Harford.

☞ This opinion will be found, on a comparison with that delivered by Mr. Dorsey in the Court below, to concur with and support it throughout. Thus the five Judges of whom the Court of Appeals then consisted, were unanimous in their decision.

CORRECTIONS AND ERRATUM.

Preface.	Page xvii.	line 31, for 'to' read 'from.'
Work.	20	15, after 'deception' expunge 'by.'
	58	1, for '$156,600' read '$155,600,'
	58	32, for 'intrusted' read 'interested.'
	60	37, for 'shares' read 'dollars.'
	61	7, before 'Johnson' at the beginning of the line insert 'R. M.'
		9, for 'as' read 'in.'
		32, for 'shares' read 'dollars.'
		37, strike out 'par.'
	62	1, for '7000' read '700.'
		6, for 'shares' read 'dollars.'
		17, strike out 'par.'
		23, 26, 27, 28, 29, for 'shares' read 'dollars.'
	68	4, 6, 8, 10, 13, 17, 33, for '1817' read '1818.'
	69	3, 12, 21, 26, 28, 30, for '1817, read '1818.'
	70	6, 14, 17, 18, 21, 23, 24, for '1817' read '1818.'
	71	10, 12, 16, 22, 23, 25, for '1817' read '1818.'
	73	36, for 'shares' read 'dollars.'
	78	1, after '300' insert 'and.'
		2, strike out 'bank.'
	83	3, for '$159,833 34' read '$169,833 34.'
	89	19, for 'R. S. Colt' read 'R. L. Colt.'
	93	27, for '20,845' read '20,848.'
	96	14, after '31,940' insert 'shares.'
	103	22, for 'payers' read 'payees.'
	104	23, for '$65,000' read '$75,000.'
		35, for 'dis' read 'dollars,' for '23rd Jan. 1817' read '23rd June 1817.'
	106	19, insert 'be' between 'to and made.'
	138	22, for '55,000' read '146,080.'
	140	34, for Art. '30' read Art. '31.'
	146	26, for 'to Smith by the Mechanics' Bank' read 'by Smith to the Mechanics' Bank.'
	180	5, for 'August 16' read 'August 26,'
	182	31, for 'delaying' read 'delay.'
	187	30, for 'any' read 'very.'
	190	10, for 'interests' read 'interest.'
	193	13, for 'in March of that year, read 'of March of that year.'
	195	21 for 'prospects' read 'prospect.'
		30, for 'principal' read 'principle.'
	197	24, for 'mint' read 'merit,'
		25, for 'coin' read 'gain.'
		40, for 'sound' read 'sacred.'
	198	5, for 'gilt' read 'guilt.'
		23, read thus 'The excuse founded on motives and objects may be pleaded before the throne of grace. Even in the exercise of that human power, &c. &c.'
		30, for 'friend' read 'friends.'
	224	19, for 'usual' read 'such'
		35, for 'the' read 'their'

Page 229 Line 20, expunge 'it' before 'is.'
38, insert 'and June" between 'April' and '1817,' so as to read in April and June 1817.
230 26, after 'endeavoured' insert 'to shew.'
251 1, for 'Brown' read 'Bowie.'
260 20, for 'Purchased' read 'purchase,'
263 39, for 'fraudalent' read 'fraudulent.'
264 8, for 'fraudalent' read 'fraudulent.
Appendix. 40 6, for 'curiem' read 'curiam.'
36, for 'sid' read 'sed' and for 'allication' read 'allocation.'
48 36, for 'considered' read 'contended.'
50 33, for 'court' read 'course.'
70 24, for 'judiciously' read 'judicially.'
72 28, for 'sentiments' read 'sentiment.'
90 21, for 'its' read 'it.'
91 15, for 'of' read 'by.'
94 1, insert 'in' between 'and' and 'she.'
15, insert 'in the bastardy cases' between 'prosecutions' and 'were.'
95 2, for 'an' read 'one.'
8, for 'has' read 'is.'
16, for 'indictment' read 'indictments.'
20, insert 'of' between 'convicted' and 'for.'
27, between 'History' and 'it,' insert, 'These remarks equally apply to the case of the King *vs* Kennersly and Moore, and
101 8, between 'right' and 'could,' insert 'to Holland's estate.'
35, between 'reason' and 'the' insert 'only.'
36, at the end of the line insert 'as supposed in argument.'
102 1, between 'individual' and 'for' insert 'and that the case fell within one of those classes of conspiracies.'
35, between 'false' and 'tokens' insert 'public.'
104 24, 25, for 'decision' read 'decisions.'
107 11, for 'public false tokens' read 'false public tokens.'
108 2, same correction.
109 7, 8, expunge 'as the pulling down of another's enclosures which.'
110 14, for 'principal' read 'principle.'
25, for 'and' read 'an.'
112 25, for 'public false tokens' read 'false public tokens.'
113 5, same correction.