

Court of Appeals, December Term 1821.

The State } Error. Dec 5. 1821.

Reported by
Jas A Buchanan &
Jas. W. Ell Gulloh

Pres. Chase, Ch. J. Buchanan, Earle &
Clinton, J. Dorcey, J. withdrew, &c.
substitution by the ap^l a^lg. v^l. of Henry & H. Murray, Esq
renewed & see minutes of this term

Murray (District a^lg for ^{1st} District) for the state. This was an indictment for a conspiracy to cheat & defraud the Bank of the U. S. on suggestion of the traversers the case was transmitted for trial to Harford County Ct. In the Ind. there was a special demurrer - joined & judg^d. on the demurrer for the traversers - Upon which judg^d. the present writ of error was ^{on the part of the State} granted by the District a^lg & the record transmitted according to the directions of the writ of error.

Three questions of importance present themselves

- 1st whether the matter charged a^lg. to a crim. offence
- 2^d If so whether cog. by the Ct. of Maryland
- 3. Whether if so & cog. a writ of Error lies for the state in a crim. case to review a judg^d. for the traverser
- 4th a minor objⁿ. whether the writ of

is in form of the record legally transmitted.

The ^{formality of the record} first necessary to be inquired into
~~whether the case is cog. by this court.~~

The writ of error is directed to the Judge of the 6th
 Jud^l. District - The writ presented by the District Atty &
 the clerk has certified that according to the mandate
 contained in the writ the record is transmitted

It will be objected that the record sh^d have
 been certified by the Judge - that the writ of
 error was ^{not} presented to and allowed by the
 Court & ^{the record} ~~by them~~ certified by the Judge.

The answer is that the usage of our own Ct^s
 is the law of the practice - and all the records
 show that they have been certified similar
 to the present. - so in Civil Lit is so in Crim.
 case, in the case of Brucke vs The State. The form
 in 2 Hare. Ent. is pursued by the Clerk in the present
 case. This being the case there must be very
 strong reasons for this court to overrule their
 own practice & shake the foundation of many judgments.

In point of law the mandate of the writ has been complied with. a writ of error a mandale to the inferior justices & necessarily it is addressed to the justices - My justices cannot disobey the writ. They c'd do no more than to inspect it & obey it. If it is erroneous the C. above to decide on it. 1 Chitty Cr. Law 516. (749) to

show that the practice in England is that the writ, ^{is delivered} operator, to the Clk who returns it with the proceeds into the crown office. In civil cases the practice

is the same precisely, as appears in ¹⁸⁸⁸⁻¹⁸⁸⁹⁻¹⁸⁹⁰ Tidd's pr. v. ^{Da. v. D. til Confocal. St. til. clerk}

~~1888~~ } Jellons Pr. x The only act of asp. bearing on the subject is 1713 Ch 4 §4. transcript to be procured from the clerk. - 12 §5. appeals in the nature of writs of error. Clks not to refuse or delay finding the record &c. It may be said this act is to regulate writs of error in civil cases - There can be no distinction in this particular as between civil & criminal cases

writs of error an often ^{sund out} ~~fast~~ during vacation & justice w^d be delayed if the writ must be presented to ~~the~~ ^{the} court.

Former practice will be relied on where it is ^{was ordered to} ~~proceed~~ ^{proceed} ~~by~~ ^{by} ~~transmitted~~ ^{transmitted}. The ~~State~~ ^{State} or the ~~proportion~~ ^{proportion} ~~of~~ ^{of} ~~the~~ ^{the} ~~land~~ ^{land} ~~of~~ ^{of} ~~the~~ ^{the} ~~State~~ ^{State} and also Martin vs The State.

It might have so happened that the Ct. was then in session & might have directed the record to be sent. The form of the British precedents state no more than that the record had ~~been~~ been sent. The record being certified under the seal of the Court is suff^t & comprehends all that was required. If the record must be transmitted by order of the Ct. and the Clk transmits the record under seal but not says that it was done by order of Ct. it is to be presumed that it was done by order of the Ct. - This will be intended. It will not be supposed the Clk did not do what was required of him by his duty. The writ was produced & if an order receiv^e it will be intended it was given & that the record was transmitted pursuant to such order & the command in the writ.

1 Chitty C. L. 662 as to the removal of a criminal case by certiorari, and shows that all necessary intendment will be presumed. Cumming vs The State of Mass. Johns. 340. The objection here was that the writ of error was not directed to the Ct. by its proper style. That the writ was not presented to the Ct below until after the return day had elapsed. - These objections were no doubt fatal - But there was

and objⁿ which was not decided on. The atty, for the p^{rt} in error to waive the objⁿ had a diminution by getting the record certified by the justices. The case cited of Martin v The State the writ of error is stated to have been supposed to be allowed by the C^t. - But the Judge did not certify the record -

The writ of error is directed to the Judge as a Court to be certified under the seal of the Court - not the private seal of the Judge - If to be under the seal of the C^t it must be under the hand of the Clerk & seal of the Court.

The long established usage & practice is the best ev^d. of the law. and the practice acc^s to the form used in the case before the C^t. has been long sanctioned.

3. The next objection is whether ~~the~~ a writ of error will lie by the State?

This is an important & momentous question. If not allowed on the part of the State a diff. law may prevail in the diff. ^{Judg} districts - The great object is to produce uniformity in the law of the land. - It is admitted that in all civil cases no matter of how little consequence there may be uniformity. But denied it to be so in the most important criminal cases ^{when life & liberty of the party is at stake}. This must be the case if the State is precluded from issuing a writ of error. It is important that there should be a revising power & fixed certainly in the law. The whole system of appellate jurisdiction must rest upon this principle. It is for the well order of Society. It is universal in civil & criminal cases.

Can it be said that all ^{that is} affects the good order & safety of society is to be left to uncertainty. when it made certain in civil contracts rights of property between man & man - These not more important than that the rules by w^{ch} criminal conduct to be judged. By w^{ch} the criminal law of the land should be fixed & known - It w^d seem that it is much more strong why it sh^d be

so in crim. than in civil cases. - But it may be said that it is the privilege of the party accused, & trusts on the pt. of the state, to have the ops of inferior jurisdiction, reviewed.

It will also be said that there is no case in the British books showing a writ of error had ever iss^d on the part of the Crown - Can there be any distinction between a judg.

w^{ch} is erroneous where given for or ag^t the crown? Is there any reason why then sh^d be a revision where judg. for the crown & not where judg. ag^t the crown in criminal cases. - Justice equally demands that

the law sh^d be fixed as well in the one case as in the other. There is but one direct autho. upon the subject.

1 Sir Wm Jones 407, The King ~~vs. John~~ bro^t writ of error. ^{an^d case of Cook & Lunday,} Cro. Jac. 210.

This case cited in 2 Bac. ab. 453 tit. Error. There are also judgery cases in the late Grad. Ct. ^{et al} ^{writ of error by the state &}

The State vs. Mepworth, May 1793 where the judg^s of 5 Vin. tit. Error, 479 cited Jam. ^{is said to be an information on the pt. of refusing. dif. a crim. case - it is when a writ of error iss^d by prest.}

the C. C. where were in favor of the traverser were reversed.

It is now said that a writ of error will not lie for the Crown - ^{No case where the question was ever raised} Upon principle there can be no reason why it should lie by the Crown as well as the prisoner or traverser. It is as important that crimes sh^d. not go unpunished as that the innocent sh^d. ^{not} be ~~convicted~~ punished. It is only in cases of Summons to Indict. that it can occur when the writ of error may be claimed by the State - ~~as from the~~ ^{as from the} ~~prosecution~~ ^{prosecution} in civil cases on trial before a jury they judge of the law & the fact - The reason why the writ of error not frequent in England is that if the Judge doubts he refers the point & obtains the opⁿ of the 12 Judges so in 1 Chitty C. L. 664 as to motions in arrest of judgment Leach to show the practice & furnishes a rational solution for not suing writ of error by the Crown - ~~that is not the case~~

Ans. ground why writ of error will lie for the Crown Formerly where they laid for prisoner it was only by permission of the crown - They were degraves & not as a matter of course and so now in capital cases in England. Chitty.

Can it be said where the crown refused the privilege to grant a writ of error or not to the prisoner, they did not refuse to the crown ^{The right} to issue it where judgment for the prisoner. It was proper to restrain writ of error in capital cases - The crown can have no object but to ascertain the principles of the law. no abuse of justice can be contemplated.

No necessity therefore that there sh^d be any restraint on the part of the crown from giving writs of error. The books are full of cases 1 Chitty C. L. 747. (514). 752.

Same doctrine 4 Burr. 2550. (Wilks' case).

The writ of error given at com. law is not given by statute. Found to be ^{for} ~~to~~ ^{the} ~~purpose~~ ^{purpose} of justice that it sh^d be restrained in criminal cases - but not in civil cases. It might be abused in capital crim. cases - no reason why there sh^d be any restriction on the part of the crown to settle the law but is for the benefit of the subject that the Gov^t sh^d have such a right. - The sovereign is ipso facto curiam to magistrates - because there must be a paramount auth^y in the land to restrain inferior jurisdictions.

There can be nothing said of the right of the state to issue the writ except the ^{abuse} want of practice cases shown where used dit was acted on by the gov^t. This writ was ~~by the attorney~~ a gov^t. who then was & now is the atty gen^l. and his well known abilities justify us in suppo. he knew the writ w^d lie. He then judges of the first talents of the country. - It cannot be said that ~~it will be said that it is~~ ^{it will be said that it is} putting the party to be twice tried for the same offence. That he will be twice put in jeopardy for the same offence - Here is only a

Continuation of the former trial. But it will probably be said that if this C. sh^d reverse the judg. nothing more can be done ^{by the C.} but a new Ind. found & twice tried. This is not so - if this C. reverse they can send the cause back (if so it is the same cause) wh^{ch} was originally begun in the Ct. below - It is only a preliminary wh^{ch} will or decided whether the party is liable to be tried in the case) Just of a trial of the innocence or guilt of the party.

As analogous look at the plea of autre fois acquit. This plea shows what the law is, that he was before put in jeopardy. Such plea if put in here w^d not do - 4 Bk. Com. 398-399. if judg. reversed the former proceeds put aside & liable to an^d ^{prosecution for the same offence} trial of the party stands if he never was accused. 4 Coke 45 Bowden's case judg. the reason of the plea of autre fois acquit is man lawfully acquitted if the Indict. insuff^t. the party may be again Indicted. bec^{ca} his life was never in jeopardy. 2 Hal. P. C. 247 If judg. the party may be indicted denovo. ^{Here the W.C. can only be by the crown. 2 Hal. P. C. 248. (Bowen's case)} The Dem. in this case same as a plea of guilty of the facts & as if motion in arrest of judg. and if reversed may be again Indict. or as in this case ^{if decided that it may} be proceeded on in the same cause. ^{Then} Here the party was never in such a situation that a legal judg. c^d be pronounced against him. Take it whether the case is to stop if reversed a new Indict^{ment} may be found - or if record put back - Cannot be said the party has ever been in jeopardy.

2 Com. Dig. 188 tit. Centenari (A. 1) the King's atty gen. has a right etc. This shows the crown may remove when letter given to the prejudice of the crown. ^{cut. similar to W.C. on'to expressed the other not}

It may be said that this C. if they reverse) has not the power to remand the record - If the C. has the right to give judgment they have the right to have the power to have their judgment carried into effect. Whether or not, it is an ulterior question to be disposed of ~~with~~ if the judgment is reversed - one case in our old records in 1701 King v Hedgcock - Prov. C. - Judgment of Procedendo awarded. If a procedendo can be awarded to give, even to the party it can award one have the trial proceeded

in. 12. Jac. L.D. tit. Certificate 409 - Is a writing &c. This cited on the first point taken up in this case see page 252.

12. L.D. tit. Certiorari 412 upon the last above point.

16. Jac. tit. Clerk 482

Fitz. v. B. 557. (H) There is an certiorari, &c.

1 Vernon 170 Chan. practice respecting the

issuing writ of error out of Chan.

16. 175.

showing that until Ann writ of error were granted

this favour not as a matter of right.

1. Whether the matter charged amounts to an offence which can be prosecuted as a crime?

The Ind. charges the def.^s in error for conspiring together to cheat the Bank and it sets out how & in what manner they did cheat. - The gist of the offence is the unlawful confederacy to cheat the Bank. The definition of conspiracy as given by the best authorities ^{to be} Hawth. Ch. 72 p. 189. 3 Chitty C.L. 1139
1 Burn's Just 389. Sac. L.D. tit. conspiracy. 3 Wils. Lect.¹¹⁸

1 East P.C. 462. 4 Blk. Com. 137 (note by Christian)

2 Mass. Rep. 329

It was contended in the Court below that there was no conspiracy except by Stat. & not at com. law. - This leads to what is commented on by Hawth. Ch. 72 p. 189 &c. ~~It~~ and laid down that it is an offence at com. law, conspiring to cheat &c.

3 Chitty C.L. 1139 all confederacies to wrong individuals is a criminal offence.

1 Burn's Just. 389 By the com. law all confederacies to injury a third person is highly criminal.

2 Jacob's L.D. tit. conspiracy, 30. By com. law all confederacies &c. highly criminal)

1 East P.C. 462.

4 Blk. Com. 137 (note by Christian) Every Conf. &c. is a conspiracy

to injury individuals is a conf.

3 Wils. Lectures 118. Accog. of Hawthorn's definition.

2 Map. Rep. 329-337, after fully considering, &c.

These auth^o. to show that all confed. to affect unlawful purposes &c. are offences against the law & punishable by Indict. - The case before the Ct. is a combination to defraud the Bank & if the case cited be a sound principle, then what is charged in the Ind. must be supported.

one question is

Whether the doctrine of ~~offences~~ conspiracy be a common law offence; ^{if not, is it} an offence under the Statute

The books show it is ^{an offence at} a common law doctrine. If it arose

under the Stat. & acted on, tho' the origin uncertain, yet it must be now adopted.

It can be shown that it is one of the doctrines of the Com. law & the Stat. made since an affirmation of the doctrine of the common law offence. It is only necessary for it to be shown that it is a common law offence. ~~affirms the Stat. in affirmance of the~~
2 Inst. 562. 2 Reeves Hist. C. L. 239 The

alterations

2 Inst. 561. 562.

The Statute has spoken of ~~do~~ not define the nature of the offence - but merely referring to the ~~affirmed~~ ^{an adde} as to what conspiracy was the object of the 1st Stat. to give a civil remedy. The 2^d Stat. gives an ^{ad.} criminal remedy. The Com. law was ^{to be} referred to what the matter of conspiracy was.

33 Edw. 1. The next Statute referred to in Hawke ch 72 before cited. This is the only Stat. wh. affects to define the offence - and whether it was in aff. or declaratory of the Com. law or whether none but what is defined in the Stat. are the only offences of conspiracy.

Contentend that it was only declaratory of only a portion of the Com. law - that it did not introduce any new offence.

To show that it was in affirmance of the Com. law

See 110 Jones 73, Smith v Braushaw et al. The Stat. made on this subject was in affirmance of the Com. law.

~~To show that~~ This Stat. does not define the whole Com. law offence nor introduce any material change in the Com. law doctrine, only to render more certain what amounts to a conspiracy. It does not say that other offences than those at Com. law or some which were punishable at Com. law sh^d be enlarged or circumscribed. 3 Inst. 143 description given of ^{conspiracy} not so enlarged as in the Stat. 2^d Coker confines it to a single offence. Does not resemble the definition in the Statute; and shows that the Stat. did not define the whole doctrine of conspiracy.

To show that offences fall in

Book of apizis 138. pl. 44, ^{art.} (27 Edw. 3). It

is under ^{or articles} to coroners &c. to inquire of inquest, and among others of ^{of offences} conspiracies - those maintain each other in interprophesies true or false. This not noticed in the ^{Statute}. 16. pl. ~~27~~ art. 19. combination among merchants fixing the price of wool - This a conspiracy not noticed in the Statute

This auth. shows that the inquiry to be had of conspiracies not mentioned in the Stat. and must be therefore at Com. law

16. 144 pl. 73. When on a writ of Allegit, persons by false ^{conspiracy} ~~conspiracy~~ caused lands to be included wh. the party had not, ^{by wh. the whole should be the parties} on Indentment

And it c^d. not be impeached tre^s on the oath of 12 of men. Did not say there was no conspiracy - but the ut. being on oath &c. - said quere

2 Roll. ab. 77 § 50 - (same case) all the land was

extended &c. - same quere.

This author refers to other cases of conspiracies which are not notice in the statute.

Book of apiza ~~26 Feb~~ 131 pl. 62 (26 Row. 3).

a false plea put in & ^{with} action was abated. an Ind. for conspiring to get the false plea put in. This ^{an} auth^r. that this matter was considered a conspiracy - This ~~not~~ one of the offences not

enumerated in the statute & is clear that the doctrine of conspiracy is a common law doctrine. The maintaining of false suits not the description of where suit tre^s defeated by a false plea. It cannot be tre^s within the statute definition.

These cases establish one of two principles - 1. Either that it was wholly at com. law; or 2. In the construction of the statute a latitude was given.

It is most rational to say this was an offence only at com. law and restricted by the statute:.....

to show that many cases, ^{of a private nature} not falling within the statute, ^{but which were highly penal.} have been sanctioned & must have been at com. law

Noy's Rep 103 (12 Jac. 1) For suspension of a will. Cited in 2 East ^{C.L.} 823 as a case of conspiracy.

This case in Noy cannot be referred to the statute Moore, 788 (4 Jac. 1) ^{the} Star chamber case of the _{it has been used}

principle that a combination in a matter in wh. they were not interested is a conspiracy

Moore, 562 (41 & 42 Eliz. 2) 9 Co. 56. b. To show the

Stat. did not embrace the whole common law doctrine of Conspiracy. In the earliest times a combination for unlawful

purposes were highly criminal - The cases read show this. Coke gives the reason that it was for the will order of so it is that such comp. sh. be punished.

But it will be said that the Com. Law of Conspiracy was not intended to or adopted in this country. Cases since the

immigration. - 1 Sidorfin 68 (13 & 14 Car. 2.) This Ind. for conspiracy

to charge a person of being the father of a bastard child. Decided that temporal court had cog. of every illegal offence to do an

injure to any person - By wh. money may ex.orted from the party This not a conspiracy spoken of in the Statute.

J. C. 1 Keeble 203.

J. C. 26. 254 motion in arrest of judg. - a conspiracy for lucre & gain. - The points raised that the Stat. did

not define the offence - and decided that it was an offence at Com. law. Shows that the Stat. made to enhance the

punishment of Conspiracy, as then provided. This seems to be reasoning of the

couple in the cause. Com. law punishment fine & Imprison. The punishment under Statute more severe in the cases than

enumerated

1 Ventris 304 (King v Armstrong, Haniford v Coffey) (28 & 29 Car. 2)

conspiring to indict for having a bastard child, a contumace cheat - defame character to extort money. a fine of £50 - not the Stat. punishment

but the Com. law one) - Has said to Cheat off. is a consp. & no other reason but given by the Judges themselves are

to be regarded. The Com. law is a law of principle & not of precedent

6 Modern 185, Queen v Best & others (3 Ann)

for charging falsely
Conspiracy ~~to~~ by affirming the party was the father
of a bastard child. - This case shows that a conspiracy can
be with charging the party within the statute, a
confederacy, to charge one falsely an offence, within the
reason of the law. 1 Salk. 174 S. C.

2 L. Raym. 1169 S. C.

6 Modern 99, Queen vs Daniel, (2 Ann.)

8 Modern 11. (7 Geo. 1) Jourman Taylors -

said it sh^d conclude of the statute. Held. Comp. an offence at com. law

~~1 Heble 650 King v Sterling~~

1 Siderfin 174, The King v Sterling.

1 Levins ¹²⁵ S. C.

1 Heble 650 ^{655. 682} S. C. - Impoverishing of the ^{ecclesiam} farmers

Held here that might be conspiracy ag^t the public. - That a
confederacy to ^{injure} a private individual ~~and injury~~ was an
offence. overt acts laid in our Ind. & confessed by the
deamner. originally a conspiracy ~~confederacy~~ to injure private
individuals was doubted whether there sh^d not be overt acts -
If there was ever a distinction between confederacies - combinations
& conspiracy - long since exploded - now all punished as
conspiracy.

3 Burr. 1320, King v Ripall, (2 Geo. 3.)

1 W. Blk. 392, King v Parsons et al.

2 Burr. 1127, King v Wheatley. (J. D. Mansfield. Soif conspiracy to cheat is an offence indictable)

to cheat is an offence indictable

2 Stra. 866, Queen v Bryan. Said if it had

been a conspiracy it w^d be - but it was nothing more than letting a lie

1 Stra. 144, King v Hope.

To conspire to cheat an individual or a corporation is punishable at common law is the position. They & other auth^s is produced to establish. The combination of numbers tends to the subversion of the law & over powers the execution of the individual injured to detect and punish it.

3 Burr. 1434, Rex v Dwall et al. (1763)

An offence against public morals, & the conspiracy made the offence. (J. D. Mansfield)

This case cannot be brought within any of the rules of the doctrine of conspiracy as set forth in the statute - most therefore be at common law. This was an offence, ^{for} which the criminal law does not give redress unless in this way as a conspiracy.

If this case is law, it clearly applicable to the case before the Court being a case against common sense & prudence could not guard ^{Mary et al}

1 Leach C. Ca. 38 (44/49) King v ^{Mary et al} Robinson (1746)

Example for the prisoners admit that to do an injury to a 3^d person was punishable as a conspiracy. This case tried by J. Miller, Foster - the last well known to be a great criminal judge &

If this cap is law, the parties in the present case cannot escape it.

But it will be said, as it was said in the Ct. below, that it was an
 imposition on a
~~subject~~ of public officer & an offence against public justice? so as to
 bring this case within the statutory provision - The cap itself
 shows it was not so considered. The Stat. does not make it an

offence to take out a license in the name of others -
 Can it be said that telling a lie is an offence against public justice
 or is it was a combination to injure the party in his person & fortune

1 Leach C. C. 274 (4th Ed.) Eccles's case (1783.)

Conspiracy to impoverish a Tailor &c of H^h Mansfield. For
 conspiring - the illegal combination is the gist of the offence, whether
 the purpose was affected or not is of no consequence. The means
 used to impoverish need not be set out - The Ind. in the
 cap before the Ct. sets out the means used, so as to obviate
 any objections upon that point.

2 East's P. C. 1010, Heavys' case. For a

conspiracy to cheat by falsely personating another, is
 indictable

4 Burr. 2472, Lo. Klive's case (1769)

a conspiracy among officers to throw up their commissions
 is an offence indictable. "The great ground". This case
 referred to in 3 East's P. C. before cited. The East India Co. must
 be regarded as individuals & the offence injury a private one
 against them.

6 T. R. 628. a case is cited in the argument

as to what combination is a conspiracy - For helping &c. this not to be
 found out it is here cited & relied on. Shows that it is done

by no. is an offence wh. if done by one w? not be so. The one can
by indulged in a civil & the other not to be visited w? h. o

16 636 ~~16~~ Griff. recognizing the same
doctrine that a conspiracy to ^{pervert} ~~perfect~~ the course of justice is ^{a crime} an offence
and which is not enumerated in the statute.

2 Camp. 358 Conspiracy for kidnapping &c
11 Mansfield, J. "If premeditated &c "But if any body of
men &c. amount to a conspiracy & may be punished?"

16 372 (note) an Ind. for a conspiracy to ruin
MacLain in his profession as an actor.

3 Chaule & Selwyn no 68, King v Deferinger et al.

Conspiracies ^{to} ~~for~~ ^{by} false rumour, to raise the public funds.
Ind. well enough without specifying the names of the persons.
This case shows that it was doubted whether ^{it was} a public injury it was
a crime? - But a conspiracy to affect a portion of the people was
an offence. This case decides every principle necessary to found
the prosecution now before the court, when the object not only
injurious but criminal?

2 Barn. & Alderson 204 (1818) King v Gill et al.

Ind. for conspiring to cheat & defraud &c. a ground was taken to this
case in the ^{in the present case} ~~case~~ below ^{it was} not taken by the court in ~~the~~ ^{that} case
cited. The conspiracy is the offence and not the false pretences
used. a combination of numbers ~~with~~ to do an injury.

13 East 228, King v Turner et al (1811)

This case seems to make a change in the preceding
decisions. If it be sound law it does not much affect the case
before the court. The Ind. alleges fraud & the means false.

L^d. Ellenborough in his op. cit. Godfrey & Dal case does not

sanction the principle as stated by his Lordships.

1 Tremain 86. ^{King v Record} (27 Car. 2). 96. 91. (31 Car. 2) Thay v

Wileox. 96. 83 Rep v Turner: 96. 84, Thay v Cisp et al.

96. 9 4. 97 Indeed this book is full of cases of conspiracies

4 Went. 79. ^{ve.} contains a number of precedents of conspiracies

ve. 3 Chitty ^{cd} 1145 to 1193 full of Ind. for conspiracies,

These cases are all English decisions - none for American decisions

1 Mass. Rep. 473 Ind. for a conspiracy to get goods &c upon credit & then to abscond &c.

2 Mass. Rep. 329 Com. v Judd et al. a conspiracy to manufacturing false indigo.

Journeyman Cordwainer Case in N. Y. similar

cases in the court of oyer & terminer in Ball &c.

2 Mass. Rep. 536

All the authorities cited establish that to conspire to cheat the Bank & Co is indictable at common law - ~~if~~ ^{the doctrine of conspiracy} that ~~it~~ ^{is} of common law origin. and whether the force is not to be come at yet if the doctrine has been sanctioned by the decisions produced it is to be regarded as a common law offence. where numbers conspire to take away the character, cheat & Co the civil law gives no remedy. must be the criminal law which is to redress where numbers unite to break down society - to injure private individuals. The law is that the agreement to do the act is the offence against the law. - The Stat. was made in affirmance to explain cases & to include those that might be confid. as not punishable at com. law or to enlarge the punishment. cannot (in fact) that it was, to restrict what was conspiracy.

But said admitted it is the doctrine in England - still it was not bro't with the first immigrants ^{to} ^{be} not applicable to their local situation. - If the courts ^{of England} have expounded the com. law different what it really is, this C: is only to look to what it truly is. what the doctrine of colonization? that they carry with them the laws of the country from which they emigrated so far as they were applicable - Hence the com. law was bro't by our ancestors - such as was not inconsistent with the circumstances of their new ^{situation & applic^e to the colony.} ~~colony~~. 1 Blk Com 107.

Can it be doubted that ^{the} law of Conspiracy was not applicable to the situation of the Colonists. Occasions may not arise for the exercise of it - but it does not cease to be the law of the land. The com. law is a system for the protection of persons & property &c. The doctrine of Infur: of freight tho' of modern doctrine, still they they rooted at com. law. The progress of time has bro't them out. They were not new principles at the time ^{not occurred} ~~was not~~ when called for to be acted on. As our wants increased the com. law applied

If the doctrine of Conspiracy grew out of the Com. law it came with the first emigrants altho' never an occasion to use it. The only inquiry therefore is in the doctrine of Conspiracy of Com. law origin the Com. law of England was our Com. law at the emigration & at the Revolution. — A current of decisions from the earliest times down to the present shows it was the Com. law. How is it to be come at by resorting to decisions of the English Courts. It was in its full extent ^{and operation} long before the Emigration. If it had ceased to be Com. law there w^d be some traces of it in the books. — Consp. to cheat was held indictable. No such principle c^d have crept into the decisions without some attempt to denounce it as erroneous. The Com. law is unchangeable. This is unwavering principles of the Com. law. The Com. law as expounded by the English judges at this day is the Com. law as it existed at the beginning & has always been the same. Not contended that the decisions of the English C^ts since the revolution are binding on our C^ts. Our C^ts have the same right to say what was the Com. law is as the English judges. But it is decorous to look to the opinions of enlightened Judges altho' not binding. — Yet not safely to be departed from unless on special circumstances for vid. — The case of Quith's

with Clements till it was declared by this C. that there was a diff. Com. law in this state from that in England - The C. said the local customs was not with our ancestors ^{it was} ~~but~~ the Com. law. Judicial decisions are the best evid. of what part of the Com. law was considered as applicable - In the absence of decisions this C. can do no more & settle that what might have been settled a century ago.

The burden of excepting this from the Com. law lies upon the grant - on the other side. They must show that it was not applicable to this state. The whole of the Com. law was extended to us ^{for the oppo. counsel} but is ~~presumed~~ ^{to show its in-} applicability. ^{add. auth.} 2 L. Ray 1179 ^{admitted} ^{OP} ² East 823. 3 Ray 487 ^{indict}

2d Point - As to the question of jurisdiction - whether this case is cognizable by the courts of this State.

This a question of a mixed political & character - and if the State jurisdiction is taken away from it, it will be placing it at feet of the Courts of the U. S. - our great safeguard is in the Judiciary of the State courts. This a voluntary offer to relinquish what wd. not be required ^{by} the C. of the U. S. and if this court has no jurisdiction, the courts of the U. S. has no jurisdiction. - This court has the right & no other tribunal has the right to jurisdiction in this case. Every sovereign State must have the right to punish offences committed within the body of the state ag. the laws of the state.

Question Is this an offence ag. the Gov^t. of the U. S. or ag. this State. Admit offences may be committed which are

cong. only in the courts of the U.S. - The same act may be an offence agt both ~~the~~ the ct. of either (as cong. of the offence). Unless the ^{const. &} act of Congress make it exclusively cong. by the courts of the U.S.

1. Against what foreigner is this offence committed?
2. By what const. is it punishable?

If conceded that it is an offence at com. law. No statute of the U.S. creating it an offence - Thus the Bank established by Congress

If an offence at all it is one at com. law wh. has been adopted in this country - and is therefore an offence agt State authority & not punishable by the courts of the U.S. - Doctrine

settled that the ct. of U.S. has no com. law jurisdiction in Criminal cases - This jurisdiction arises wholly under acts of cong. ^{in crim. cases - to show wh.} Cranch 32, United States v. Hudson & Goodwin (1812)

When it was held that the ct. of the U.S. has no Com. law jurisdiction in the case of a Libel. "That st. not given up by the states is reserved to the states & courts created

This doctrine has never been doubted - The question was again bro't upon the S. Ct. of U.S. | Wheaton 415, U.S. v. Coledge

another case in the circuit Ct. in Pen. 2 Dall. 394, U. S. v. Morrell (1798) an Ind. for attempting to bribe the Commissioner of the Revenue of the U. S. - Urged that the Ct. of the U. S. had a com. law jurisdiction - none being given by the ^{constitution &} acts of Congress of the U. S.

The courts of the U. S. have no com. law jurisdiction, unless the United States have a common law. The Ct. could exercise no power unless given by the legislature. The United States have no com. law. If they have what com. law is it? Is it the whole com. law of England or only a part - If a part what part is it. The diff. states have adopted or rejected certain parts of the com. law. To determine what com. law exist it must be by legislative exposition - Now has none been declared by Congress & their Ct. have declared they have none - Hence then it is clear that the Ct. of the U. S. have no cog. of this offence - and unless the courts of the state has jurisdiction ^{the offence} then ~~it~~ must pass unpunished - and this leads to the

2^d question - By what courts is ^{the offence} ~~it~~ punishable?

This an offence within the territorial limits of the state & therefore within the jurisdiction of the state courts. Every state has the power to punish offences committed by the government & laws of the state. It is an offence committed against the Institution of the U. S. located in the state. The crime is the important point & not the institution against which it was committed. Similar to Murder &c. committed on a public officer of the U. S. - Crime is not individual injury

but as the sovereign power of the state. The individual injured is not a matter of inquiry - It is the redress of the public injury - punishment of breach of duty ag. the state - Individual injury is by private fruit. - The crime & the object on w^{ch} committed is distinct. This is the case now before the court. There is nothing in the crime of conspiracy to distinguish it from any other offence - and can as well be punished as Larceny or murder - It is a crime at com law and therefore a crime punishable by state C^t.

an essential diff. between the state formerly that of the U. S. - a state gov^t possess all powers & wh^{ch} are not expressly taken from them; ^{under their grant to the} All offences committed in a state are ag. the state unless it be an offence strictly national) - ~~the~~ whole power of governing must be admitted is given to the state gov^t except what the people retain - The state retain it unless the people has granted it to the gov^t - 9 Johns. N. Y. 574 "When the people &

Art. of Confederation 2

Const. U. S. amendment 9. 10.

7 Federalist (letter 32) page 227. "An entire & 16. 230 "It is not however a man & C

3 Vol 16. lett. 82. page 264. Legislative power & jud. power.

"The state retain all preexisting powers &c." "The state is to retain the jurisdiction they now have unless taken away by one of the enumerated modes.

Hence it follows that unless the jurisdiction has been taken away by one of the enumerated ways it remains in the state.

The next enquiry is there any incompatibility in the state courts exercising jurisdiction in this case. Unless the power is given to the Ct. of the U. S. to try the offence it must be retained by the state - as to legislative powers & judicial powers - 4 Wheaton 410, McCulloch vs The State of Maryland.

1 Wheaton 325, Hunter v Martin. - "on the other hand the sovereign power of the states &c

5 Wheaton 49, Houston vs Moore. "The const. &c. a man grant ^{not} don't per se grant the power &c. unless express & in terms it is given - concurrent auth. reserved unless incompatible

4 Wheaton 192. 193 Sturgis v Crowninshield. Held

that the state may pass a Bankrupt law in the absence of a Bankrupt law of the U. S. -

The grant of the Bank of the U. S. given under a power by construction & not under an express power granted - Hence the reasoning in the case in Wheaton more strong in favor of what contended for, that the offence of the bank don't make it exclusively punishable by the Ct. of the U. S.

26. 195. when the power not exercised, the states in the mean time may exercise the power.

26. 199 The const. don't grant to the states &c but bind them in respect of it &c

These cases show that the Ct. of the U. S. has adopted the rules laid down in The Federalist. Showing that in the absence (where power given) to exercise the power, the States may exercise it - not destroyed unless an absolute repugnancy. This with respect to Jud. powers - with respect to legislative powers there must be express legislation on the subject at all - There is a total absence of all legislation whatever upon the subject. - Being so the courts of the State must exercise jurisdiction to remain until expressly taken away. - The Congress opposed at most can only say it is a concurrent power - but by construction it is said that Congress might legislate upon the subject - not expressly enumerated in the constitution - Take it therefore as a concurrent Jurisd. The State power does not cease unless the power of the U. S. has been exercised upon the subject. - To apply it to the Jud. powers which emanate from the legislature - the same latitude is not allowed. The Jud. power may be coextensive with that of the legislature - But Congress not bound to vest the Ct. with all the power it has under the Const. it might be given. Here they have not invested

by congress in the courts. The creation of the institution w^h ought try the offence is not vested with the power to do so unless expressly given 2 Federalist 324 - Infame doctrine in 5 Wheaton 26. 27, Houston vs Moore. Held that the exclusiveness of the Jurisdⁿ of the Ct of the U. S. depended upon the Judiciary act. - a case not falling within the Judiciary act of ~~1789~~ was cognizable in the courts of the State - That, unless it is expressly given to the Ct of the U. S. it is given to the State Courts. That the states c^d not legislate upon the subject where regulated on by the Congress. - But if not by the Congress expressly given to the Ct of the U. S. the power of the Ct of the state remained. 5 Vol. Laws U. S. 262 (The Judiciary act)

Given exclusive Jurisdⁿ to the Ct of the U. S. in certain enumerated cases. § 6. 268 concurrent jurisdiction with the state courts in civil cases - Exclusive as to criminal cases ^{in all cases given} ~~under~~ the Ct of the U. S. - The case of Houston v Moore is that ^{the punishment of the offence} ~~it~~ had been ^{not} given to the U. S. Ct that it remained Cog. by the State Courts. The Federalist lays it down that Congress might give to the state courts a right to decide cases falling under the acts of Congress.

It is clear then the Jurisdⁿ of the state courts is only ousted when Congress gives the Jurisdⁿ exclusively to the Ct of the U. S.

It cannot be contended that the Ct of the U. S. have cog. of the offence. The Ct themselves say they have no com. law. and Congress has not given them Ct any Jurisdⁿ upon the subject. They have not said expressly

that conspiracy was an offence to be cognizable by their Ct.
 Supp. the act creating the bank had defined the offence
 & had created a Ct or vested their ^{with power} Ct. to try it. — W. that precluded
 the state court from exercising Jurisd. But Congress has
 not legislated upon the subject. It was competent for the
 states to legislate upon the subject & this state has in fact
 done so by their act at the last session.

It is not clear that Congress can delegate any
 part of their ^{own} criminal ^{or civil} jurisdiction to the state courts.

In Hunt v Martin, Wheaton 325 it ~~is~~ declared by the
 Supreme Ct. that Congress c^d. not vest their own Jurisd.
 to the state tribunals. Altho' this cannot be done, yet
 when the state Ct. had the power set is not taken from
 them ^{it remains}. Then an case where the states had no
 power — for instance where the U. S. may borrow money
 pledging the credit of the U. S. The creation of the gov.^t of the
 U. S. necessarily gives new powers never held by the states.
 Congress may arm the militia — if they do not the states
 may do so. So also a Bankrupt law — if not exercised
 the states can do so. In the absence of legislation by Congress
 (when the power had been in the states, they can proceed
 to exercise it. — apply that to the case before the Court Congress
 has not exercised the power, it therefore remains unimpaired
 by the state, and the state courts

Instances

The mail Robbers in Baltimore, where murder was committed. The parties were tried, ^{in committing the robbery} ~~by the ct. of this state~~ & changed.

In McCulloch v The State of Maryland & Wheaton

^{by taxation or otherwise to retard &}
The states have no right to ~~tax~~ the Bank of the U. S. or
any of its office. - It may be argued that the exercise
of ~~power~~ in this case by
the courts of the state may retard &c. the Bank of
the U. S. The language used by the ct. is to be
considered as applicable to the subject matter
before them. By no fair construction can the terms
"or otherwise" be applied to restrain the state courts from
punishment of crimes committed on the Bank
The sovereignty of the state more ^{the state} ~~is~~ ^{had} for its own
that of the Bank U. S. - It is in the exercise of its ordinary
preservation - It is in the exercise of its ordinary
criminal jurisdiction and to be considered as
controlling the operation of the bank in any particular.
Now the state take under its fostering care the
Bank of the U. S. which was neglected to be provided
for by congress. This is not to retard but to protect the
Bank - to punish offences committed on it. When
a case arises when it is to ~~thwart~~ or injure the bank, then the
question might arise. ^{by the court below} ~~said~~, that [5 Wheaton 36. 45] to

Case on H.

another ground or view is w^t the power may conflict with the Bank - We^r said it is acts done by officers of the Bank & w^t the Ch^r of the State has no concern. Said the offence committed officially - This is not so, it is an offence w^t their station in the bank gave them an opportunity to commit - An official ~~commitment~~ ^{offence is} when if separated from the office ceases to be an offence - ^{had} separate the offence here w^d it be any more than if it ^{was} committed by persons wholly unconnected with the bank - Not so in official character or officers - How they are not official officers - They are mere agents - Servants of the stockholders - Not to be distinguished from the relation of Master & Serv^t - w^d it be said that larceny committed by one of the officers of the bank w^d be officially committed, and he must be punished as an officer - A neglect to do duties of an office is a misdemeanor where the office is not to be separated from the person - Being called President & Cashier are mere discriptions of the persons similar to gent. or yeoman - The acts do not relate at all to their official duties. If the officers conspire to burn ^{or rob} the bank, they are equally beyond the reach of state authority. An officer of the Revenue may rob the coffers of his office & is not punishable by the courts of the state or of the U. S.

Mitchell on the same side. The questions arise ^{demurer} on a demurer (which he reads).— The Ind presents double & complicated questions— 1. What is the precise & limits between civil injuries & crimes—

2. What the precise limits of state & federal jurisdiction— on crimes committed in a state

Both these questions may be solved in the answer in one— Do the matters charge a crime cog. by this Court. If this question answered in the affirmative, the Ct. below had jurisdiction of the subject matter and if so no Ct. of the U. S. have jurisdiction of crimes aimed at the several states.

To ascertain the nature of the offence, ^{only necessary that} the Ind. ~~to~~ be resorted to.— Two distinct charges of the traverser 1. certain citizens have confederated & combined to cheat & defraud. 2 sets forth a similar confederacy & overt acts— Two charges, 1. a cheat effected by confeder^{actually perpetrated.} & 2. a consp. with that object not completely executed.

If ~~then~~ it is proved that either is an offence under the laws of this state it will be just.

The Ind. presents a political personage holding property
 & that certain persons combined to cheat & defraud
 a preliminary question ^{It is to be} ~~to~~ ^{ask} whether lawful or
 not lawful. No decision of the C^t of the State - what
 then is the Com. law on the subject. Is it the Com. law
 of England. Is this C^t to stop at colonization & blot
 out all those principles w^h have been developed by the
 British courts - what portion of the laws of the mother
 country do the subjects emigrating to settle a new
 country - a conquered country diff. from the
 settling a country - where they take with them the
 whole of the Com. & Stat. laws of the mother country.
 The condition of an infant colony does not call
 for the Ecclesiastical laws - If the infant constitute
 an Ecclesiastical court then they w^o be bound by the
 Ecclesiastical laws of the country whence they went.
 They take all laws applicable to their condition.
 It was their inheritance & a protection of their
 rights to which they are entitled as their indefeasible
 inheritance. That this doctrine is applic^d to the
 infant colony 5 Com. Dig. 108 tit. Navigation (G. 1)
 4 Com. Dig. tit. Lair
 2 R. Wms 74. 75, Blanket v Gordon

15 Johns. 103. ~~104~~ 140, Jackson vs Gilchrist

Smiths Hist. of N. Y. 268-271, sp. of Sir John

Randolph.

That the Emigrants from England had the whole
of Crim. law. will appear by the diff. charters.
settled under the Gov^t of the mother country. They
^{to be} were considered British subjects & their children
entitled to all rights &c. of British subjects. - No
privilege lost except that of the right of subject.
The doctrine that allegiance perpetual & the Emigrants
could not dissent from their allegiance - nor could
the King withdraw his protection from them. -
By many of the Charters the King professed to grant
to the proprietary a right over the lives, ^{liberties} of the subject
The King had no such right to delegate such right to
the proprietary 10 Sect. Char. of Maryland. should
be confid. as if they had remained within the Realm.
1703^d when renewing the Charter of Mass. he was
advised by the ablest lawyers to omit this section, ^{in such a} he ^{did} -
Holmes annals - also Chambers ^{an} shows that subsequent charters
omitted this clause. 5 Jac. L. D. 158 as to term plantation
or colony &c. What ^{is} admitted ^{is} what respects depend upon
colonial legislation with an appeal to the King in Council

It must be shown that the Leg. etc. have decided ~~that~~ what portion of the Com. law adopted or rejected - before is no criterion, ~~of the rejection~~. Had it it been put to the first Emigrants whether the law of conspiracy sh^d be adopted or rejected. There was nothing in their situation wh. w^d induce them to reject it. They were liable to conspiracy from within or without. The first crime committed was a conspiracy by Cleyborne. - The first trial of Jury was ~~in~~ ⁱⁿ ~~1738~~ without legislative provision. The first legislative act was ^{In 1738 Col. to enjoy, necess. the great charter} the act of 1749 recog. the doctrine of conspiracy. In 1768 Fendall & his accomplices conspired ag^t the civil gov^t. The colonist considers themselves as having bro^t the Com. law with them.

The Com. law always lay fallow. Lie dormant only until called forth on occasion sh^d arise.

The Bill of rights embraced the whole system of Com. law en mass without limit or restriction - It limits the introduction of the statutes unless applicable. Not wholly that this doctrine of consp. w^d law was considered as not proper to be adopted - That where there is combination ^{or conspiracy} to rob, murder, &c. it is to go unpunished. But if one man robs and of the most trifling article he is to be punished. - But said we only trace a consp. during the corrupt reign of the Stuarts. - We and all tho we trace the doctrine in later periods, yet said that was after emigration.

to hear
 not expected that the com. law applied to this country
 was only to be found in decisions before emigration
 or the decisions of our own courts. -

The enquiry is then what is that com. law
 applicable to this subject.

1. What was the com. law before emigration

2. What since

3.

All confed. or comp. to perpetrate any
 felony w^{ch} w^d be indictable ^{as a felony} if committed by one
 is equally so if done two or more ind. as a comp.

~~In comp. if the act~~
 It is upon the 5th Clasp of Comp. that it is
~~not admitted~~ ^{contended} by the learned Jmt. do not extend
 to this country - all others are admitted by them.

under the head of misdemeanor this
 Ind. may be supported - ~~if not~~

First clasp of comp. - King v Wheately, 2 Burr. 1127. [1761]
 Ind. for a cheat - The Jmt. was acquitted. He it is
 their decision say if a comp. to cheat it is indictable

all the judges assume it as a settled principle of
 law that to cheat by false tokens or conspiraecy is indictable
 said by the counsel Jmt. that no cheat indictable unless
 by false public tokens - and this decision was extra judicial

The point before the court was whether this Ind. for a cheat was indictable. It is decided & they necessarily go into the doctrine showing why this case was not sustainable.

2 Roll. ab. 78, ^{tit Indict} ^{cit} ^{books} from the year 2 H. 4. (in 1400) -

This says a conspiracy to cheat by false dice is indictable.

This before the stat. Hen 8. - This shows that a false public token not necessary - where a cheat was accomplished

by conspiracy without false public token.

In 1553 ^{Terms of Day} Planters says two or more to do indict. ^{copy of}

Plow. 46. 54. Co. Litt. 357 Coven at Com. law implied (1666)

the concurrence of two. Nov 103 - 1 Sid. 312 a

comp. to cheat an illiterate man by reading to him a deed

fraudulently. all these cases show that a cheat at Com. law, ^{affected by comp. indictable}

so also 3 Keble 399. 111. This last case a cheat by false dice & comp.

3 Mod. 221 ⁽¹⁶⁸⁹⁾ a case of false discription. The J. admitted that

it was a plain fraud indictable as a conspiracy.

5 Mod. 180 (not used).

7 Mod. 37 (1702).

6 Mod. 302. 2 Ld. Raym. 1179. an Ind. ag two

for personating a merchant & broken &c. 2 East. P. 6.

committing on this case says it was tantamount to

a conspiracy - Ind. was given for the Queen - The

pretending to be a merchant cannot be set down as doing

so by false token - If a token it was not a public

token.

2 East p. 6858 note Seavys case - Ind. for a comp. to defraud & convicted. This case entitled to great confid^{ence} aware of the points referred to by the Judges & nothing said by the Ind. - There was no false public token - not stated that any false sentences, used.

King v. Doble, 0 Mod. 42 Comp. taken to run a race fairly & he did to be an indictable offence.

King v. Parson, ^{stat.} 1 Sid. 431. 1 Vent. 30 Comp. to

Cheat, without the use of false token warranted indictable in Tremaine, King v. Record ^{1075 to 1080 of Indictments} and various cases.

were cheats effected without the intervention of any token private or public. 13 Vin. 460, King

v. O'Brien. 7 Mo. 2378 (L.C.) Comp. to cheat as cited

by East. The principle to be collected from all these cases is that a private cheat effected by conspiracy is indictable. 2 East 833 the stat. of the created no new offences, but enhances the punishment in certain cases.

But the objection to doctrine of Comp. to Cheat, is no legal standard or rule to establish it. It must be by false public tokens: - False dice included - but no other cheats. The ordinary can of procedure may guard ^{of a deed or will} by the latter & not the former. How will this apply to forgery? common can of procedure cannot guard ^{it} ~~the~~ ^{Forgery} a man to accomplish a cheat - False personating another.

will not be said that a cheat in either of those means are not indictable. said that ordinary care & prudence are uncertain and must be left to the jury. so in the case of Hornidge - The Malice referred to the jury. 2 East. Rep. 863 2d Ray. 865

second class of cases to extort money by tenor. Hinnery & Moore v Str. 193 all the decisions over ruled by the kt King v Parry 6 mod. 185. 2d Ray.

1167. 1 Blk. 293 - 3 Burr. 1320. 999. 2 Burr. 980.

Third class of cases of comp to impoverish generally by spoiling a man's trade or profession

all Lanes case King v Seale,

King v Coke. 2 Campb. 358

Fourth class to seduce or ruin female character

Winter 3 State trials - ⁵⁷⁹ Lord Grey's case (34 Car. 2^d)

referred to in 1 East P. C. 460 The doctrine in this case never doubted.

3 Burr. 1434

5th class To impose on Courts of justice by conspiracy

6 T. R. 619

6th To affect the public police.

4 Burr. 2472

Baron Ald. a comp. to cheat

The question whether the offences as mentioned in these classes of Cases are at Com. law & whether they extend to this Country.

1. That the com. law of Edw. has not come down to us is contended for on the other side.

Reeves Hist. of English law 275.357 shows that by many of the more modern ^{cases of comp.} had formerly been clasped under the crime of Larceny. Cites The Mirror. This one reason ^{why} there is no report in the year books bet's consid. as larcenies - Book of Asp. 138

Crown C. P. tit Deceit 225. 226, 227 to 242. inclusive

26. tit. Conspiracy 98. 205. 206. (21 & 22 Geo. 3.)

x Ind. by ^{unlawful} artifice by dice (not false dice) no false token also for counterfeiting Dutch guilders - no false public token also for obtaining a note & taking it - at com. law - so indorsing a note - defrauding one of moneys.

Three last are Ind. as individual

For sodomy for conspiring to shield one who had committed sodomy &c.

tit. Sworn Inducement (2a. 2) Trenmaine 299 Reg v Montagu. Comp. to

suborn the wife &c. to live in adultery (2a. 2)

26. 215 Ind. as Lord Grey cited from the State trials 3 Vol. 52. (36 Ca. 2)

26. 213. Reg v Bingley. for seduction } 36 Ca
26 214 King v ^{Palmer} ~~Atter~~ Ind. for D. } 2

6 T. R. 565, King v Lara. The doctrine settled in King v Wheally fully recog^{ned} by the Court for the first^{time} in their argt. - They cited a case in Latch 202 for cheating where no token was used. Other cases also cited -

2 East C.L. 1004 tit. Perforating & Ind. for falsely personating another -

16. tit. Forgery 852. To forge means &c. at Com. law a false making &c. "an experience prove & more modern definition law kept pace with the experience of the times &c. - Decimus - to defraud a mind. at Com. law.

This corroborates that various offences ind. at Com. law not effected by ^{public} tokens. - W^h punish as well for private or false token as false public tokens. Said in King v Ward that Stat. ^{4th & 5th} made in eff. of the Com. law. so in East C.L. tit. Checks.

Boulton 24, tit. Larcen. Ind. - See no false token

This case before Stat. of Edw³ 1 shows the doctrine well settled before Edw³ 1. - other offences punished before Edw³ 1. & this Stat. takes in new cases unknown to the Com. law or cases not defined Stat. P. C. 173. 174 - Stat. of 33 Edw³ 1

Set out - 4 Clasp of cases embraced in that Stat. - Those who bind themselves falsely to Indite. 2. falsely to move pleas (maintenances) - 3. Infants to make false appeals, 4. Those maintain malicious insuperjures

said by the d^{ist} in error that this Stat. embraced all cases of conspiracy - In their language that it funds down the doctrine of Consp^{iracy} smothering all the rest.

This Stat. passed to punish certain offences prevalent at that time & not L^{ord} Coke says it was made in aff. & dec^{ision} of

the com law in the particular cases therein enumerated.
 This common practice to declare what the law is - Instance
 the embroglement of goods by law^s to be larceny. It was
 to put at rest certain doubts - He enumerates a no. of
 instances - The parts in the stat. were therefore the
 doubtful parts - leaving the rest of it well known
 and practiced under - as Comp. to commit murder, ^{burn} &
 robs - and so to cheat.

In Edw³ 3. other comp. fully recognized
Book of a pign 138 pl. 44 - Two Ind. for confederating
 a. of conspirators to aid each other offensively or defensively
 in any enterprise be it lawful or unlawful false or
 true - This not embraced in the stat. of Edw³ 1.
 Upon this author rests the whole doctrine of Conspiracy
 the 5. 6. art. in pl. 44. when such ind. whether the matter
 true or false. Bowells Inst. 282 published first ^{in 1605} before
 the time of Emigration, ^{explaining the punishment} for dispersing false rumours &
 also forgery - to cheat any one of money =

Id. 215. - the paper injurie - Prop who plot
 & w. all lawyers call conspiracy - showing there was
 comp. not enumerated in the stat.

Definition of comp. in Hawth ³⁴⁸ - If the Ind.

upon the count not putained under the first count, yet
 according the definition of Hawth. the second count
 can be putained - All confed. to prejudice a third person
 by cheat. King v Turner in 13 East Rep. will be urged as
 creating a doubt as to the subject matter in the first count in
 the Ind. Upon this count Ed. Ellenborough is supposed to have

ruled the previous cases - He does not intimate any doubt that
 previous cases had not been correct. and he says they had gone
 far enough - ^{will be taken}
 There are several directions to be distinguished in
Stawken and said it would embrace King's Whately
 that it is not an unexcusable intention. Therefore
 unfitted to a free people -

This ~~direction~~ part of the law is necessary in number of
 cases to punish unexecuted intention as well as an
 actual commission - ^{of such & such} see Moore before cited where
 held that the matter of the agreement was punishable -
 It will that was a Star Chamber case so was Treyner
 can a Star Chamber case which is the leading case upon
 the subject of duress - Star Chamber decisions are
 mentioned with reverence & respect - True in the reign
 of Richard II they were censured - Because of a few
 improper decisions will it be proper to set aside all their
 decisions - During the reign of Elizabeth they were admitted to as
 much respect as the decisions of the Kings Bench

of Coke 56 (The Poulterers case) where said

that all comp. punishable by the Com. law
 called of spices - Did, whether the matter is of value
 altho not put in use or executed. This in the reign of Jas I
 comp. between merchants - ^{all value comp. false alleance &c &c} These comp. not within the
 latter spirit of the Stat of Edw I - The Com. law
 was intended to prevent the unlawful act, with a view
 to the civil code - An act when done by one a civil remedy
 but when more than a crime. In the view of the penal code
 as here the civil code converted into the penal code where done
 by two or more who w? not so if done by one

It rests upon this that a combination affords strength, &c. which common prudence is not guard of. by but wh^{ch} might be if only done by one. Shall the law stand by & see this object opening & going on with^{out} preventing it. Is it not a law of mercy to interfere & endeavor to suppress. Would it be proper to wait to see it effected & then measure are taken to prevent. By execution of the project it disarms the law wh^{ch} becomes a dead letter. It may punish the aggressor - but does it guard & protect the pursued - wh^{ch} it might have done by stopping it at the threshold. - When the overt act committed then the law sh^{ould} interpose. - When the intention can be come at then it is to be prevented. But said how know the intention criminal until convicted of a crime - and in this case it would be punishing a man under a law of wh^{ch} he knew nothing, and unless the Ct. decide the law it cannot be known, and therefore for the first offence he is to be acquitted but the law not manifest before. No man can excuse himself by ignorance of the law. An ignorant man may be punished for the smallest theft - His ignorance that the law punished the offence will not excuse him. - The public not aided nor the individual robbed much injured. It is to discourage - The law punish combin^{ation} but it is to deter ^{studies a error the} _{cases} mischief & protect the subject. There can be no reason for abrogating this part of the criminal law. But said the law pays no regard to individual character. - Whence Libel for the Ghost &c. It destroyed the peace of mind of the person & induced him to part with his m^{oney}.

There is no actual prejudice in any of the cases - Ken v Seely
 the act was not accomplished - 1 Leach (Robinson & Taylor)
 where personating &c. There was no injury to the master. It was
 to get up a claim to Dower after master's death - Here
 was no abuse of public justice or public police. It was only
 a consequential injury. Holland could not sustain a civil action
 for the injury - for there was no injury perpetrated. Shows the law
 sustain an Ind. where there could be no civil remedy.

So forgery with intent to prejudice the person - altho'
 no possible injury still the law punishes the forgery -
 so in false personating the law punishes whether executed
 or not - What in the case of burning - When the intention
 can be come at it is punished. It is that which the law
 punish - For instance an old house &c. may be indicted as
 a nuisance, yet if burnt it is punished for arson - altho the
 house is detached from others & no danger to other houses -
 It is not the injury - It is the offence -

4 Burr 2557 (Wilkes case) 1712 Manfield

The greatness of the crime - Pilory does not imply actual outrage -
 an offence in its nature as the laws of society - Contra pacem.

Taking the intention as a crime & punishable will be
 said to have grown out of the Ecclesiastical Courts. Not so
 for until overt act manifest the intention not punishable

Some law of Scotland says of larceny if it
 be once done it cannot be undone - The law considers
 it a violation of the laws of society - Dissonantly providing
 over right &c.

Here we present to the view of the ch. persons
 who have despoiled a great portion of the citizens of the U. S.
 Is there here no danger of offending the citizens - Is it not a
 case which calls for punishment - Does not require the aid of a
 Stat. to punish.

Suppo. as the learned judge has said, a man on Sunday,
while the citizens are going to Church, stops to walk
through streets & passes - are we to wait for a statute
to punish him - or look for precedent to see that
such case had been punished? -

The law of Comp. is analogous to all the other
Crim. law. It stands with riots - routs - If it is abolished
they are equally so - It is not a question whether the
this Ct. will abolish this part of the com. law - This is?
the root of a great body of the crim. law.

It is for this Ct. to say whether we are to stop
at Emigration or not, and consider whether the decision
of Courts was the first that fixed part of the com.
law - The whole of the mercantile law grew up

since our revolution - Will this Ct. shut their eyes
as what the learned judges in England have
declared what the com. law is - Where the question
had been political it wd be well to look at the current
of the times. These cases we do not only on - but there not
many of them - These other cases wherein it cannot

be suppo. the judge had a leaning in favor of the
minority - The numerous cases of Bastardy where
the civil law wd touch or redress or person charged with
getting a bastard child - This is a abuse of public justice
yet if conspiracies to extort money &c it may be punished.

Queen v Glanville, Holt, 354. If a woman conspires
to charge persons with getting her with child &c & send with child
with others &c. It is indictable.
for the purpose of extorting money. It is indictable.

Individual prejudice for the protection it affords is what the law looks to.

The modern case of Barnes & Alderson - & Maule & Melwyn are too important to pass over.

If a riot has a public object it is treason - If a comp. to injure an individual by defrauding him of his right.

King v De Bunnat ^{3 Maule & Melwyn 72} to conspire to raise the gov. funds

~~Now it was taken that~~ William ^{3 T. R.} Forey of bill of ex. ¹⁸⁴¹
general intent to defraud just. - said that the indictment

ought to be laid to the prejudice of some individual. This case in 1814 D. Ellenborough Ch. J. & was also Ch. J. in

13 East Rep. He says the crime is in the conspiracy and w. a complete offence. - This doctrine of comp. has not been

considered as unsuitable to this country. ^{In} Maule & Melwyn.

Parron ¹⁸⁴¹ before cited. If not unsuitable then how can it be so here?

He said the crime consisted in the conspiracy - There is a case in the books showing that a prof. entered his master's room with intent to murder but he relents - He was prosecuted for a burglary in entering the room with intent to murder. An attempt with intent to murder is punished - not punished with the same penalty as murder - so in burglary, larceny &c.

repentance does not prevent the punishment of the intent to commit the act. East Ch. J.

Conspiracy for attempting to starve French soldiers - foreigners - shows the law not for the protection of their own citizens - The Stat. of Exors. 1 mentions the ^{containing a} the extinguishment of the Book of Assizes false rumours as to price of wool - one man might have done it with impunity - but a combination to do so is punishable.

ago.

The law protects the interest of Speculators in the funds, & if
so is it not to protect the Stockholder of the Bank of the
City as they are a class of Citizens more extensive
& numerous. (in 1818)

Barnwell & Alderson 204. Similar to the

Case before the Court. cf Abbott Ch. The offence of
comp. effected at the no. perfect. That a comp. to
act by subtle means & device is indictable that Com law

By the Demurrer the def^s in error admit that
they conspired to cheat def^s and the Bank of the City by subtle
means & device, - and by the whole of the decision,
it is shown they can be punished for it. This
indict. stands clear of the subtle reason objected in the
books as to the means unlawful, &c. &c.

Under Mutual. Geo 2. & 3. it became nece^s to state
what the false pretences were. greater precision essential in Ind.
after the construction given by the Ct. 2 T. R. King v. Mason
Then for the case in Barnwell & Alderson the false pretences
unessential. The object crim. - It proves that comp. to do
a civil injury is criminal - and whether the def^s had the
property or not, still it is indictable, being a combination to
do an injury. The property of the bank was not, ^{legally} in the custody
of Buchanan & Williams as Treas. or Directors - It is not
stated in the Ind. that either they or M &ulloha stated
to be entrusted with the money of the bank. Yet may
be admitted the carrier had the legal custody

As to the question of the writ of error & the return.

The case from ² Hale, ²¹⁰ are conclusive - a writ of error contains a certiorari - sometimes a certiorari issues alone. The writ of error to the superior C^t to examine the record & the certiorari lead to the superior C^t - There can be no question that certiorari issued on the part of the crown - may issue before or after judgment -

As to the return - universal rule in the English practice when ever a party takes a step in the cause all irregularity is waived in the proceedings. 4 Cranch 180 H.C. that it is too late to object to irregularity after writ of error -

Here it is admitted the record is before the Court but the D^r has pleaded in nullo est erratum after which no diminution C^t 80.

But the writ is returned regularly. It is under the seal of the Court. That is the word in the English form. The word in this writ seals (until it is a clerical error. The writ is to the Court & can only be certified under the seal of the Court.

The question of jurisdiction will be left to the Congress who are to follow on the same side. The potential powers of Congress was given up in the C^t orders by the D^r's compliance

Raymond for the Defendants in error.-----

The importance of the principle to be established in this case is alone to be regarded. There is no fear that the depts will ever be converted.

The Ind. ^{changes} a course to cheat the bank & for having committed the fact. Yet the argument goes upon the ground that the offence was not perpetrated. The ~~change~~ whole current of the argument goes to this point that it breaks down the barrier between the Civil & Criminal code - If ~~it~~ it be laid there can be no case where ^{there is} a joint action of two depts. ^{there may be} in the same case a public prosecution may be maintained - Converts private injury into public wrongs - Shows nothing more than a right to maintain a civil action for the injury. But the attempt is to convert this private injury into a public wrong. a prosecution for a cheat cannot be maintained at com. law. I will take up the questions

1. Whether the unit operator regularly paid or not - The state has no right to a unit operator to employ a judge in its own courts. It is a novelty. If any inconvenience it can be provided for by statute. But said it is not novel - & Sir Wm Jones has been referred to. That was a unit operator by the depts & the

reported by the atty gen. computed to the writs issuing that it was a writ on the part of the crown - The dist. was fined for one month & the jury acquitted as to the other month. Why did the King bring writ of error? ~~but~~ said vic. the Jrdy. was not a capitulation Jrdy. (where a small fine went to the King) - The Jrdy. was reversed & is reported also in Cro. Car.⁵⁰⁴ & stated that the writ of error was for the dist.

an. case in Stale 247 has also been referred to where said a Jrdy. of acquittal it remains unhp reversed. He referred to the year book^{of Hen. 5} for it is not the auth. of Lord Stale. If it were it wd be authority. But if it be an auth. if no case since it must be considered a novel doctrine & the non user ^{of 1500 yrs} may be consid. a evidence of the writs not lying. These are the only two cases which have been referred to as at all ^{intimating} ~~proving~~ the writ lies.

Writs of error are grantable at the discretion of the crown officer - with it being it is a matter of right - If the dist. cannot have a writ of error as a matter of right, there can be no reason that the crown should - As a matter of right the crim. has not a right to counsel - The court is his counsel. This being the case is there any reason where the King's Court prosecute more than defend the crim. that the King sh. have a writ of error.

What effect will it have for the State to have a writ of error. It is trying an idle question. The dist. not in person in ct. They are discharged by the Jrdy. of the ct. below. - What is it therefore to try - nothing more than an abstract question. Cannot bring the party into court

Will this court establish the precedent of letting
 down to try abstract questions - If they do writs of
 error w^d we enumerated (3) in *Comm. Cap.* not
 only on the parties; the state, not the crown. It cannot
 be said the parties are bound by their own recogn.
 It will have no effect of settling the law, but all
 these questions can be left to the jury. The C. might
 say here that the doctrine of *Comp. Dow.* prevail yet
 the jury are not to be bound by it. - Where the jury is
 the ultimate tribunal it is wholly unrecap. for
 this C. to decide. This court has settled that a Bill
 of *excep. c.* be taken *Queen vs The State*. Supp.
~~and~~ the C. had instructed the jury that *Comp. Dow.* is not
 a *cap. doct.* and no *excep. c.* be taken - How then C.
 the point be brought before this C.

How does the common law stand upon the subject
 of writs of error? 1713, Ch. 4 §4 only regulates the form
 of proceeding. 1785 Ch 87 §6 party aggrieved may appeal
 for penalty, fine or damages. Does not give the state the
 right. The C. has been referred to *The State vs*
Imperialist & others in 1793 where writ of error by the
 state & judge reversed - It was for letting liquor
 by the small - It is manifest it was a *cap. doct.* to have
 the principle settled. Does not appear that the cap. was
 ever argued - If auth. it is no auth. as binding on this C.

This Ct. often over rule their own ^{decisions} ~~of~~ They did so in Queen v The State that in Baker vs The State where they acted on a bill of ex cept. in a crim. case - Where the point is substantive it is never confid. as auth.

The case
No auth. being produced to sustain the writ of error, it is evident that ~~the writ of error~~ This court will quash it.

2. The writ was directed to the Judge, but does not appear that they ever saw it? yet a record is put as answering the command of the writ - Does not appear that the writ was presented to and allowed by the Court. This court are not fully certified of the contents of record - It does not emanate from the Court below Does not appear that the Clerk is certified by directions of the Court.

⊕ If this Ind. is sustained it will be redressing civil injuries by a crim. Prosecution. King v Wheatly of Dominion.

As to conspiracy - Maxim used in the trial of Warren Hastings - no man to be tried upon any thing but a known law in existence so wth the accused can be referred when put upon trial. The law must appear

in unequivocal language in ^{stat.} ~~law~~ book or decisions, De. 31st.
Lawyer Magazine 57 same case in Leach. ^{It was by the} Case of the Bank of Eng.
He who flouts violates the law Manifest Duetum
The Ind. was not sustained. The offense greater than stealing a chicken
Adultery not punishable at Com. law.

There was no known Com law or other law under which he could be punished, and he was acquitted. -

2 East, P. 657. (Bafely, case). Decided to be no offence at Com law. It was a breach of trust only. -

and principle - The Com. law considers nothing an offence if it does not clearly & explicitly define. -
The Com. law does not define the term Cheat. Not in the power of man to give any other definition that no one shall impose upon another. - The Com. law defines Murder by cheats by false tokens to the... -

It is said, ^{in the 2d. contd. that the} offence of Comp. consists in the agreement

whether the object of the agreement be lawful or not & to support the doctrine - and authorities 8 mod. 11. have been cited where it is said

a comp. of any kind 2 Tra. 866. 6 T R 686.

3 Burr. 1320. 1424. 6 mod. 99.

These cases referred to to show the extravagance to which the doctrine is attempted to be carried.

The direct contrary of the doctrine is that the bare naked agreement not punishable - must refer to the agreement to ascertain its object. Why refer to the object if the agreement is punishable whether lawful or not - abstracted from the object it is not punishable - an agreement may be to build a church - so to commit murder - as they to be placed as similar - must resort to the object to ascertain whether the agreement be lawful or not. If the object is lawful the agreement must be lawful also. By this principle are all the cases to be governed - Hope as it are not law -

Hawk. has been cited - It is equivocal & may

be explained as an auth^o. of the doctrine contended for
 by Compt for the state. 1 Hawk 348. "There can be no doubt
 that all conf. ^{whatsoever} wrongfully to prejudice a third person, at Com. law

Confed. synonymous with conspiracy. - Conf. means
 an agre^t. taken in a bad sense - does not imply an agre^t.
 to do a praise worthy act - "wrongfully" - This ambiguous
 what is meant? Does he mean wrongfully in reference
 to the moral law? certainly he does not - for there are
 a no. of cases are immoral w^h not punishable -
 sup^o. fornication - This immoral & yet not punish^d.
 when two persons agree to commit it. Take the case
 of adultery - not punishable at Com. law. 4 W. Com 65.
~~punishable in the temp. c.~~ take no cog. except private
 injury. - Hawk. does not then mean any thing in
 ref. to the moral law. could it extend to privatizing
 This immoral act & yet not within Hawk. definition
 term of wrong - an agre^t. to privatize not indictable as a
 conf. - so also the Slave trade before 1808 - never pretended
 it was not immoral trade - they c^d. be carried on b^o.
 the law did not prohibit - can it be carried on now
 clearly not - Is it more immoral now than it was
 before it was punishable. - What becomes of it?
 (Manifest term of the c. being the Customs Mor. of the
 country. - Does the word wrongful apply to the
 civil code? It cannot be extended to the civil
 code at all) - sup^o. it did what w^d. be the consequence
 sup^o. two or more agree to do an act with reference

to the civil - sup^o. two joined in a bond & they
 agree not to pay it - This unlawful for them
 to compel not to pay - sup^o. agree to commit
 civil
 trespass - this wrongful, yet Ind. will not lie
 for comp. - again - defers for terms of years &
 they agree not to give up when term expire
 Is this not a wrongful act - yet c^o. they
 be indicted for it - This shows that Hawk.
 definition cont. a patent ambiguity.

The definition then must be in reference
 to the crim. law. - must mean criminally.
 and being so excluded the present case, b^o. c^o.
 can show that to cheat not criminal -
 The couple pay it is by deceitful means & is
 highly crim. at com. law - what is deceitful
 means - Take the case of adultery - it is done
 by deceitful means - If this Hawk. meaning
 take the case of obligor of a bond - The intention is
 concealed - Take the case of the news of the destruction
 of crops in England divulged. where the vessel kept
 back & one of the persons went on shore & speculated
 in the purchase of flour - It was wrongful in regard
 to the moral law - Deceitful means were used. This
 leaves the definition in no better situation.

The fair interpretation of Hawthorn make him an auth^o of the prosecution - 3 Chitty ^{c. 1138. 1140} may be claimed as an auth^o of the prosecution. So also Lord Coke's definition of Comp. excludes this prosecution from the doctrine of Comp. - so also Blk. in his 4 Vol. 136. 137 who ~~says~~ treats on the subject & entirely excludes the present prosecution. 3 Inst. 143 definition of Comp. given. 9 Coke 57, (Poulters case) - 2 Inst. 562.

In none of these cases does Lord Coke take in the case before the Court. Not likely he wd have omitted the principle if in instance as a com. law doctrine

3 Chitty 1138 &c. The offence consists ⁱⁿ the unlawful agreement - with reference to the crim. law is evident - "neither have the decisions &c." It might be inferred from the decisions that &c. The "union of persons" meaning &c. shows he disapproves of the inference drawn from those decisions - This auth^o. coincides with Hawkins. The auth^o. citing Hawkins to w^h the C^t. has been referred as to be taken with the explanation given. The question then is Is cheating an offence at Com. law - whether the def^s in error conspired to do a wrongful act according to Hawkins' definition.

~~The dict a t^y did not contend that a cheat~~
It has been contended that a cheat when effected by one is diff^r from a cheat effected by two or more. This is denied - If the law does not forbid cheating no matter whether done by one or many.

Whately's case has been ruled in Burr. It is
 a mere dictum of a D. Mansfield not to be ruled
 on - No ~~other~~ case cited where Ind. maintained
 of a cheat at Com. law ^{affected by comp.} - ~~is~~ The case of Heavy
 was under the Stat. ^{§ 10.2.} for false pretences. The
 case ~~was~~ was a comp. to cheat by false pretences
 & made it punishable - This only case w. has
 the semblance - Qui cases cited for the purpose
 but they do not bear them out. - Until it is
 shown that a cheat when effected by one differ from
 when effected by numbers - The cases were for the
comp. not for the cheat. - The term cheat is
 a gen. abstract term & applicable to 1000 diff. cases
 getting a lie is cheating. ^{expressio} ~~falsus~~ falsi or suppositi veri
 an cheat - The definition is a partial departure
 from the strict departure line of moral rectitude
 This broad c. w. ^{almost} include all persons - The
 Com. law founded in common sense & Heaven
 nothing at large. - Such a doctrine that cheats
 undefined punishable at Com. law can never
 prevail. There are cheats which are defined -
 false tokens, false dice &c. Here there is no doubt
 for specifying the offence - Com. law punishes no
 offence unless it defines it. If one man cheats
 any. the civil law remedies it - But not ^{cd} 2 East, 571. 834

6 Q. B. 585 (Lara's case), held that a cheat could not be ind. at
 com. law. The party could avoid the
 2 East C. 2 579 (Milden case) - cheat no offence at com. law
 Cooper, 323. (Bowers' case). New ordinary can do. could not
 prevent the cheat - but held not indictable at com. law
 3 Burr. 1127 (Wheatly's case)

Embezzlement, Breach of trust, not punishable
 at com. law. See, however, in the case of Laurie's Magazine
 and 2 East C. 571:

an agent to do a mere civil injury is no crime.
 offence to cheat, not a crime. offence - but it is a civil offence.
 with respect to the crim. code, cheating is lawful -
 the person injured has his remedy. - An agent to cheat
 therefore is no offence at com. law but only a foundation
 for a civil action.

a latitude had been given to constructive treason
 by induced parliament to interpose - as to Larceny
 the act has extended it far beyond the com. law
 definition. This done by bringing Embezzlement within
 the definition of ^{theft} larceny. where nice distinctions
 taken by the courts, where breach of trust is larceny.

If the owner parts with the prop^y of the property
 it is not larceny to embezzle it. The act has continued
 & converted a mere cheat into larceny. Courts have
 supplied the defects of the law instead of waiting for legislative
 provision - So as to the doctrine of Conspiracy.
 As from ^{the} definition of Hawk. is evidently ~~to be~~ ^{to be} wrongful
 criminally - that no cheat undefined punishable at com.
 law and a crime offence

Reports of cases are evid. of the com. law - but if
abroad they are not to be regarded as law - ^{will attend to} the cases

relied on by the prosecutor - will first ~~not~~ read the
Stat. of Edw. 1. stated in the Stat. that it is a final

definition of conspiracy - Independent of this all the
cases of comp. come within the statute ^{the Stat.} that it is as
broad as the com. law. some dicta in the books
saying that the Stat. was not as broad as the com. law

Book of assizes 38 pl. 44. contains the comp. of

the judges of assizes - and said that comp. here mentioned
w^{ch} are not in the Stat. ^{The case here decided came within the} ch. 25 page 282

Stat. Edw. 3. felony for any men to conspire

ag. the State.

Many cases have been cited w^{ch} are wholly
inapplicable to that before the Court - will only attend to

Novi Rep 103 Does not appear to be any
conspiracy in suppressing the bill. That it was a comp.

at com. law.

D. Sup case
Moore 788 Star Chamber case. It is not
that it

law. Person may be lawfully a prisoner. It is the
Carta magna of the King dom - They did enquire whether
there was law or not

26. 562. similar

Sid. 68 Kemberly & Child. a Bastardy case &

summary to draw the law upon all those cases. It is a
conspiracy

to charge a man with Bastardy was to charge him cunnally
and is an abuse of ^{County} public justice - the process of the Ct. of Justice

43th. Com. 65 Having Bastardy - crim. brings the case
within the Stat. of Edw. 1. and so do the following cases.

1 Keble 203. 254. Same principle.

9 Coke (Poulterers case)

6 mod 185

The principle upon which ^{all the cases} they are to be examined ^{are} ^{no}
auth^r more than the case upon the Ct. required
the decision. The mere dicta of the Judges are not to be
regarded. The op^s of the Judges taken down by reporters
in many instances are not in the words of the Judge. These
op^s not dicta^d in writing - but taken down by catching
a sentence here & a sentence there. If the report comes
whenever a Judge travels out of the case he gives an
op^s on points not raised or argued and is not to be
regarded as auth^r - so in the case in 6 mod. many dicta
the case did not call for.

1 Vent. 304. Ind. for keeping a bastard child

This is not to be correct. must be for having begotten a bastard
child. This shows how incorrect cases are reported.

1 Stra. 707 (Rex v Edwards) Ind. for conspiring to
murder two persons in order to bring a charge on a parish - held
not an offence indictable - The act of marrying not unlawful

1 Calkeid 174 (Rex v Prefs) speaks of crim. at com. law
or some crime under Ecclesiastical.

9 mod 10. (Jouman Tailors) Ind. for consp. to raise their
wages

with the Journeymen Tailors

Leuch 274, Eccles cap may be classed, & the Cordwainers Cap

in N. Y. - and deny them ^{all} to be laws.

37 Stat. 3. et al. in England passed upon the subject of regulating the prices &c.

If it was ^{law} in Engl. it was in violation of some statute - But in this country where prices not regulated it is no offence - In this state craftsmen, shoe makers - Grocers entered into an agree^{mt} not

to purchase Whisky barrels - If the doctrine of the above caps, then all these merch^{ts} w^d be indicted

for up^r than \$1.50 - There were not indicted - Here an cooper an^d a plumber - If indicted one must

indict all - Woodsawyers entered into an agree^{mt} not to saw wood for up^r than a certain sum.

Merch^{ts} in N. Y. entered into an agree^{mt} not to purchase goods at auction - Never suppose the law was violated - Folly to say the English regulations

entered in this country. No stat. here as it has in England - a prohibition all over the country

not to wear British cloths will it be said they violate law by affecting the public revenue.

The prohibition not to drink tea - will it be said it was unlawful - It was calculated to affect the importing

merchants & the revenue of the country. - a prohibition to put them Congress respecting the tariff ~~law~~ is it indictable - No

law here to punish it. The policy of the country of it.

Again the slave trade - many association entered into to abolish it - was it ever considered indictable - They agreed not to buy any west India produce - This affected the King's Revenue & West India merchants - Lord Thurlow opposed but he had seen Judge & Chief persons had been ^{not} before him he w^d have said it was calculated to injure the revenue & ruin the West India merchants - Were these persons ever punished or indicted and yet they came within & the manifest doctrine again an agreement by Luther, Calvin &c. to affect the reform. This w^d be as much a comp^l as any other w^h has been mentioned The effect was to overthrow the hierarchy - the proper doctrine in England. The case in 8 Mod 10 is not law & declared by Lord Mansfield that this ^{was} not a good report.

Eccles case is not law & never c^d be dis opposed by the case in 13 East Rep.

Lid. 174 extraordinary case ^{same case in} 1 Lev. 175.

1 Kebble 655. 675 (The Subwomen case). This case falls within the principle of the Journeymen Tailors case and the same argument applies to it. There was an agreement not to buy beer - similar to the grocers to buy whisky barrels & the merchants not to buy at auction - said to be an offence against the King's revenue. If it is law all the associations mentioned might be indicted - It w^d be unjust to the times, to the country & against the policy of our laws.

is in the power of all the courts in the country
to prevent such associations. The principles
established during the reign of the Stuarts &
the other tyrannical reigns will not be suffered to
be established in this country - and ^{will} never receive
sanction: by this court.

3 Burr. 1320 (Prispall's case). The report of this

case is incorrect, and cannot find out what the
case was. Not shown whether the taking was feloniously
or not - It might be a case within the Stat. of Edw.³
supp. not felonious taking. might very rightfully
take the hair out of the bag. The case must be
thrown out of the camp. - It is a brand with ^{undoubtedly} felonious
taking was the charge -

1 W. Black. 392. This case liable to the same
objection as incorrectly reported - Comp. to accuse a
man of murder - Before whom? In all probability
before the Grand Jury - Not said before he was to be
accused.

2 Burr. 1127 (Wheatley's case) Ind. for a

Cheat at Com. Law.

This case an auth. as many
of the cases wh. have been cited. But this case besides contains
many principles wh. is not law. He says the offence
must affect the public. Supp. there was a law that to
brand the man in the moon w^d be Ind. This w^d not
affect the public. To affect the public must break
the public law. "If a man uses public measures, & fills to

all or many - He need only sell to one to break the law
 This is said to have fallen from his Lordship - It shows it
 not the law - "In the great course of his dealings. It is an
 offence if done once as well as if done at 100 times. Cheat by
False tokens, ^(he says) common care & prudence not suff. to
guard ag. now is this the reason! It certainly not -

The op. throughout is unfounded & not law -

This is the case relied on to support the prosecution
 and only necess. to show a case where ordinary care
 & caution was not suff. to guard ag. ^{cheat} This is not the
 case. No! 2^d manifestly great & good &c. yet not to
 take everything he says at law - He was a great magistrate
 & judge & he says the Ch. of King Bench had the custodia mor.
 of the country - and he took upon himself to regulate the
 morals of the nation.

1 Str. 144. This case falls within the principle
 of the case ^{upon contracts} ~~before~~ the Court. It might have been the
business card maker - To get rid of the case must
 bring it to be law - set, 13 East Chp. 228
 ag. it. ^{where there was} an abler Ct. & the case manifestly
considered & decided - It is not to be distinguished
 from the case in 1 Str. 144. If either case was
 indelible it was the case in East wh. had never
 been - It was most aggravated case - d. Ellenborough
 says that it w^d. be converting private injuries into
 public wrongs.

Delavalley Case, 3 Burr. 1434. This no case at all

It was a motion to show cause - only an intimation from the Ct. that such an Ind. wd be... They admit the case to come upon the Ct. ^{altho the case is no quibbling, yet} There are former expressions of D. Mansfield w. are worthy of consideration. Here his Lordship says the Ct. has custas morum of the Country - If so why do the Ct. suffer so much immorality to prevail in the State. If the Ct. is to regulate the morals in one particular, they must to all. He refers to Sedley in 1 Sid. 168. (Sidney). The Ind. read thro' the case that altho there was no Star Chamber yet the Ct. had the custody of the morals of the Country and punished all offences ag. decency whether there was law or not to justify them. What line be drawn as to what moral ^{is} what not - what good manners & what not.

Depart from the rule that no man to be Ind. unlesp under some known law otherwise is no end to the extent to wh. the doctrine can be carried for good.

1 Leach ⁽³⁷⁾ 44 (Taylor & Robinson) agreed to get married in the name of other persons. Cant be said upon what principle this decision was founded - might be be' imposed upon a public officer to get the license - abuse of etc. of public act. might bring into courts disputes about the marriage. No offence

to get married in any name not their own - Is this an
Ind. offence - But it inferred that it was to cheat Holland
of his estate. The marriage was lawful & only a suppo.
injury to Holland - Will this ct. sanction the decision
in this case & the arbitrary doctrine held.

2 East C. L. 1010 false personation - This
is an offence at com. law. This case was cited for
enforcing the case of Heavy in Leach 234 w.
came within the Stat. of Geo. 2. - false pretences
& devices used. It was to do an
h. Chivers 4 Burr. 2431, ^{comp.} to throw up Comps by the officers
This as the public policy of the nation.

6 T. R. 628 False certificate to improve
upon the ct. relative to the public roads. This was
an abuse of ^{comfy.} justice & depends upon some
local law

2 Campb. 358 ³⁷² a mere obiter op. of
Sir J. Mansfield

Maul & Selwyn 68. This case most likely
turned upon some English Stat. It was to ^{propagate} ~~propagate~~
a report to affect the public funds - If it was as a
lie it was not indictable offence. The case might
be supported under Stat. 2 R. 2 Ch. 5. 12 R. 2 Ch. 11.
referred to by A. Bl. Com. 149. ~~the~~ False news respects
great men Ind. at com. law. Is it so here? clearly not

No fact persons here coming up to Blackstone's Discip.
of false ^{rumor} ~~news~~ operating aft.

4 Bk. Com. 107. Stat. in force in England
no man shall have more than two coimpes at his
dinner. This is as applicable here as in England
and will it be said we have adopted it!

Barnw. Alderion 204 King v Gill -
Comp. by false pretences & devices. according
to this cap only charge it was by false pretences
with saying what - It was a cap on the form
of the Indict. - It might be under Stat.

2 Burr. 999 Comp. to charge one with felony.
and the question turned upon the form

2 Stra 193

1 East C. L. 160. 460. Statute to make it felony

A question on this great principle as to Crime,
being law in England. contend that even at Westminster
Hall the doctrine contended for cannot prevail
upon the principles of the com. law. Yet admitting
it is the law in England it is not the law here

As a basis to this arg. all the auth. cited
emanate from the Stat. of Edw.³ 1. are founded
on that Statute - no cap shown anterior to that Stat.

The Star Chamber c. never considered them bound by a strict construction of the penal or other laws - But exercised arbitrary power - Not bound down by the rules of modern times - They tried cases without the intervention of juries. ^{4 Bk. c. 266.} They may have decided correctly in some cases, but w^d be strange if they did not. - all the cases cited in the books have been founded on the Stat. of Edw.³ 1 w^h statute has never been extended to this country. Not having extended the cases are no autho. in this c. - Supp^r. Ind. for cheating by false tokens & cases produced under the Stat. of Hen. it is from the Stat. did not extend. w^d the cases be authority?

To show the Stat. of Edw.³ 1 does not extend

Ref. no. 22 of the year Nov. Sep. 1809. - The Chan. acted under this resolution - Nov. 1820 no. directing the Chan. report to be printed for the use of the state - It was acc^{tly} printed. In this report the Stat. of Edw.³ 1. is stated not to have extended. - This a legislative act & binding - They had it promulgated to the citizens thereby holding out to the people what Stat. were in force - If not so it was to intrap the citizens w^h cannot be attributed to the legul^r. - The English decisions therefore on that Stat. not to prevail here w^o as more consequence than if made on ^{an English} statute of three years ago -

Again I admitted that the Stat. of Edw.³ 1 was not as broad as the com. law - It said that all the

com. law was extended whether applicable or not to the State,
 and the Bill of Rights 3rd sect. has been referred to - The
 meaning^{is} they were entitled to such as they chose
 to adopt. The Chan. in his report was governed by
 the usage & practice adopted in ^{the City of} the State - where
 a perfect non user he stated it as not adopted.
 apply that to Cheats - w^h have been practiced
 time immemorial - (yet as ~~it~~^{the Stat.} was never practiced
 under the Chan. do not consider the Stat. as not
 extended - yet it was applic^d to many? as the
 people of England - still by a non user it am^t. to
~~mean~~ a rejection. - so the Stat. cheating by false
 pretences by Sec. 2. - a non user for 150 yrs is suff^t.
 to evin^d. of the non extension of the Stat. - Will not
 pretend there has no agree^t. Cheats &c. and yet
 no prosecution to convict the persons..

Even if the people of many? have as much
 right to abrogate any pt. of the com. law as they have to
 abrogate a Stat. by non user &c.
2 Dall. 394 § Chap. J. (and no one knew
 better than he did) - Acts anenton &c. Each colony judge
 for itself what part of the com. & Stat. law they chose
1 Bk. Com. 44, Hereby an offence at com.
 law. - Has this been adopted here - yet it was as applicable
 here as in England. Will not be pretended that this pt. of the
 com. law has been adopted, or ever practiced under

Besides these there are a great many others - a postscript
 This C. at June 1808 decided in Browning v McGill
 that there was such thing in this state as market overt.
 This was quite so as applied to this state as in England -
 This C. must have gone upon the ground of non-use
 more reason for saying ^{that com. law respecting} Conspiracy has never extended
 than that there is no market overt. The idea
 that the doctrine of Comp. passio was first hatched
 in N. Y. & did not originate with any of our Lawyers.
W. Emmet drew the Ind. - He is not a native of
 this country, but of Ireland, the country where
 the doctrine may prevail. [W. Mitchell the Pres.
 received the sanction of W. Martin the Attorney]

The stat. respecting Cheating are wholly uncertain
 unknown what false tokens means - It is not explained
 leave the court to find out as well as they can - The
 stat. are equivocal - This sh. not be the case in penal
 subjects - A bare lie may be a false pretence - all frauds
 whatever are false pretences. The people of Maryland show
 their good sense by not acting under these statutes.
 This shows that no man shall be punished ~~except~~ under
 known law - How know what the law under these
 statutes. The same vid. that the stat. Com. law of
 conspiracy not adopted as that the stat. of Hen.
 respecting false tokens - so as to market overt - though
 here because Browning v McGill was a civil - this
 a crim. case.

Upon both these grounds there is an end to the prosecution.

and strong reason why the law of Comp. does not exist in this country. - It is a very doubtful question whether Comp. an offence in this state at all. Take High treason - what says the Const. of the U. S. The con. law diff. cannot indict here for conspiring to commit treason - must have committed the treason. If so can you cannot punish for a comp. to cheat when you cannot punish for a comp. to commit treason. There must be some overt act. Yet at con. law the law agree^s to commit ^{an offence} ~~the act~~ ^{when overt} punishable. But it is not so here. There is no offence in the law in intention without acts. The source from wh. the doctrine of intention being punishable originated in an impure fountain - where the rule was taken for the deed & Coke 5. 3 Rever's Hist. E. L. 413. It is folly to say that the agree^s is the overt act - Supp^o. two agree to go upon the high way to rob - afterwards they repent - shall they be punished for the bare intention - If one man had determined to commit the act & does not why not punish him as well as when there two who agreed to commit the act.

The next question is as to the jurisdiction of this Ct. and is of very great importance as all constitutional questions are - As important for the state gov^s to retain their rights as for the genl. gov. to have the rights vested in it.

The propositions to be maintained are

1. The genl. & state gov^s are foreign gov^s as respects each other

2. The com. law takes cog. of offences ^{only} as being known to the com. law

3. The Bank of the U. S. is a political being unknown to the com. law

4. This ^{therefore} wheel administers Justice according to the principle of the com. law cannot take cog. of this kind. 1. Because being unknown to the com. law 2. The Bank created by a foreign gov.

1. No diff. in making out this proposition as laid down in McCulloch v The State of Maryland, by Ch. J. Marshall -

The complicated nature of our state & genl. gov^s. The gov^s are not foreign as to the citizens - but they are foreign as respects each other - May be compared to a line going from the genl. gov. to the heart & from the state gov. also to the heart of the citizens of both gov^s.

There are but two species of gov^s as relate to the citizens - Domestic & foreign - They are domestic as regard the citizen - but they are foreign to each other - There is

a sort of bye path from the C. of the State to the C. of the U. S. in particular cases - The Gen. Gov. cannot influence the State Gov. - its Governor, Legislature or Judiciary except in certain specified cases.

But it will be said the Const. Laws of the U. S. are the supreme law of the land - The Legisl. of the several States bound to take notice of the Const. of the U. S. as much as of their own Const. not bound to take notice of them for the purpose of administering - only to notice them so as not to violate it - no more than a waggoner bound to take notice of a road so as not run foul of it. So as to the law of nations - one Country bound to take notice of another's laws so as not to violate them - Congress must take notice of State laws & cannot pass a law if there where they are within the constitution England bound to take notice of an act of Congress so as not to violate - If law saying English ships shall not enter into our waters, they bound not to violate - The State Gov. not bound to carry into effect the Criminal laws made by Congress. In civil cases no bound as to them than are bound to take notice of the Civil law & the laws of other Gov. Contended by some that the State Gov. not foreign independ. Gov. we can't declare war - might as well say that a man we can't do in England as he c. here what therefore he is not a man.

The state gov^t is sovereign for all purposes of the state as any other gov^t. - Has as much power & might be tyrannical if the people w^d submit to it. -

Where there is an independ. gov. it must stand with relation to any other as a foreign gov^t. - But it will be said gov^{ts} are social gov^{ts}. What are the powers of a social gov^t? (cannot be imagined. England has no right to violate the laws of France - she may have the power - so the state may violate the Const. of the U. S. yet it is nullity. - [2. the proprietary gov^t before the Rev.]

4 Wheaton 405, McCulloch v The State of Maryland.

Marshall Ch. J. - "If any one proposition" &c. and read state gov. where this equally applic^d to both § 6. 406. The gov. of the U. S. tho' limited is supreme. Read the state in the place of the U. S.

If the state passes a law conform. to the Const U. S. Congress has no right to repeal it.

2. The com. law takes no notice of corporations

They are wholly unknown to the com. law. It is an artificial ^{and created} being brought into existence by a foreign gov^t. -

cannot be murdered - can't be robbed, bec^{ca} cannot be put in fear - no personal identity. But said this is an offence of the state and not the bank. The law pass cannot be violated except thro' the medium of a person. can't steal goods belonging to no person -

The Com. law never contemplated such a being as
 the Bank of the U.S. - It takes notice of nothing
 but a species of being in existence at the time of the
 Com. law. Supp^d in France monkeys were declared
 to have all the capacities of a man - If the monkey
 'goes into England' w^d it be considered as a man. -
 all corporations unknown to the Com. law - It cannot
 be known that the Bank can be cheated except
 by the law creating it - Burglary committed at
 the banking house - so arson on the House - It is
 that as w^d the offence is committed. It is not
 the dwelling house for the Bank - It is the house
 of the agents. - If no one in prop^o. then no offence
 larceny - what is the taking away the personal
 goods from the prop^o. of a person - the right of prop^o.
 need not be in the holder - If larceny com^d on
 the bank - must be charged to the prop^o. of the
 carrier being in his prop^o. 2 Leach 2 East C.L. 652
 the case of Hackney Coachman - goods stolen & charged
 as the goods of the Coachman tho' he was not the owner -
 The Bank cannot have the prop^o. of its funds - must
 be in the prop^o. of its officers. - It is laid in this
 Ind. of the P. D. & C. This the political name -
 Forging bank notes - Not indictable unless under a sp^t.
 act. Why a sp^t. law necess^y. w^d the Bank unknown
 to the Com. law. The Bank of itself cannot execute a Bank
 note except thro' its officers tho' for it was forging the notes of
 a Bank would be nonsense -

may be said to be

one case to the contrary in 2 Binney 332. This case is not as the doctrine contended for.

Nothing in the offence of larceny, felony &c. w^h impunes the doctrine contended for -

This Ind. cannot be sustained even admitting ^{when} ^{can it be said} that a being created by a foreign Gov^t that an offence committed ^{against} that being can be punished - This is an extravagant principle - This Bank only to be noticed for administering civil justice - but not criminal offences.

5 Wheaton ^{more} ^{Heaton} The decision right but the reasoning are not correct. May admit that the law to carry into effect an act of Congress

2^d Point as to Juris d^c - The legislature of the State has no power ^{over} the Bank of the U. S. or its officers - If it had might control the operations of the bank - might call for statements - If the legis^t. has not - this court can have no power over it - The Ind. charges that these persons made false acc^ts &c. - To sustain them the books & affairs of the bank to be produced in Ct. and this court may find for the books &c. This the legis^t. c^t. not do - nor can this court - But Congress c^t. do it. - Supp^r. ^{as in the} this case the Bank have aided in this prosecution all the books may be produced - But Supp^r. a favorite officer of the Bank was promoted & they did wish to produce their books - C^t. this c^t. compel the production of their books? If they did it w^d. be loudly cried out. - What right has this Ct. to expose the concerns of the Bank & offend and injure the stockholders.

If cannot tax - cannot interfere at all. A Wheaton 403
McCulloch v The State of Maryland is referred generally as
 to the right to interfere with the Bank.

Winder on the same side. As to the sufficiency to
 return of the writ of error &c. No auth. is relied on on
 the other side to prove the sufficiency of the return - but
 I? the universal practice justifies it - This not so, for
 the practice in form caps show that the clk sends up the
 record by the order of the court. This reasonable & proper
 that the C. sh^d. order the record - The writ must be directed
 to them & they are to obey it. a writ to a sh^{ff}. The deputy
 cannot in his own name return the writ. must be in the
 name of the Sheriff. The clk may do many acts by writ^{ts}.
 the order of the Ct. - But there are other things he cannot
 do writ^{ts}. the order of the Ct. - C. he give a judg. writ^{ts}. the
 order of the Ct. - If he said it was done by order of the C. then
 prima facie the C. ordered it to be entered. ^{If not said so the judg. w^d. be reversed} - So here if it
 had been certified that the writ had been produced to Dallard
 by the Ct. then altho' the fact might not have been for yet to be
 taken as if properly certified - There might be two caps to
 the writ of error applied. Is it for the clk to up discussion of
 w^d. ever be proper - No the C. sh^d. direct which. - If he does not find

the record until the writ of error until allowed by the Ct. he is not
 to be in default. Ct. not attach. the clk for not obeying the writ
 unless it was ordered by the Ct. - The writ is directed to the Ct. and
 to the clk. - He is the legal instrument & organ by w^{ch} the record
 is to be transmitted after the Ct. directs it to be sent. - The precedent
 in Harr. - Ent. is in civil cases - nothing as to the form in civil
 cases. Not necessary to question the practice as to civil cases
 w^{ch} may be justified under the act of 1713. Ch. 4 § 5. which
 regulates writs of error in civil cases, expressly not to crim. cases.
 No bond must be given to stay execution on the judg. - No
 crim. case has been produced showing that the ~~writ of error~~ ^{record was ordered}
 was not ~~followed~~ by the court. so done in the cases of Hellonin vs The State
elleperrin & others, ^{also to this Ct.} the certificate is so - In the case cited
 in Harr. & Johns ²⁴⁸ Cumming vs The State, the writ of error was
 produced to & followed by the Ct. But said in Bruke vs The

State the return is diff. - but there was no question raised on
 the point dit passed sub silentio - If the clk neglects to
 find the record, the Ct. is called to do that w^{ch} they know nothing
 of - for the clk may never have had from the writ to them. -

The Ct. says he finds the record accord to the act of assembly
 The act gives no direction on the subject.

How far a Dist. Atty can obtain the writ of error. It
 seems it sh^d. be left to the Atty Genl. to sue them out. He is the
 great law officer of the State & his discretion consulted. This
 seems to be a question worthy the consideration of the Ct.
 Not so much danger to the abuse of the power in the Atty
 Genl. as in the Dist. Atty who may not ^{have} the same prudence
 & discretion of the present Dist. Atty. - This point mentioned
 Dec. this case seems to be upheld with new doctrines
 But said an appeal to the record all errors in the return is cured. This
 cannot be permitted in a crim. case. If party moves in arrest of judg. yet he
 will be permitted to move for a new trial. Party not bound by omission. Ch. 4.

2. As to the right of the state to sue out a writ of error in a criminal case

Says the writ of error sh^d be allowed for the purpose of uniformity of decision &c. The reason does not apply - for it is not the policy of the law to subject the party tried in a crim. case to the strict rules - Better that the guilty sh^d escape justice than to harass an innocent person -

But it has no effect to render the crim. law certain.

What are the cases in wh^{ch} a writ of error can possibly lie in crim. case? only in a case like this before the Ct. cannot be done on Bill of exception but it does not lie & has been so adjudged. only in cases of dem^r. at 1/2. verdict. These are rare & do not often occur. Few cases every year in wh^{ch} the law can be settled acc^g to the doctrine contended for. The com. practice in crim. cases is to proceed in that mode wh^{ch} precludes this court from reversing the error if any in the trial below. The whole law & fact go to the jury. No reason therefore for the allowance of the writ of error on the part of the state - especially in the absence of all practice. Laws only in this state & none from the English books wh^{ch} show clearly that it is practiced in that country. -

Admit the common law may be fixed by this court is it binding on the jury in crim. cases? They are the judges of law & fact and no matter what may be decided in this court the jury are not bound by it. When the jury decide the law & fact for what purpose of good is that this Ct. are to settle the law - It might be disrespectful in the jury to decide ag^t the opⁿ. of the court - yet it is done every day & will be done - Supp^d

this very case the Ct. were to reverse & a new trial, w^d? not the
 jury notwithstanding have liberty to say the party was not guilty
 where w^d? or the reverse? There is no attaint in this state so as
 to punish the jury for a false verdict. It will not be said that
 it is applic^d. to this state beca^us. is that has never been practiced
 There is no means therefore for correcting any errors in crim. case.
 No such thing as new trial in favor of the state in a crim. prof.
 & why not? for the reason that the jury are the judges of the law &
 fact. Shows that uniformity of the law may be violated by
 juries, some conforming & some not just as they please. -
 Supp^o the court below had decided ag^t the demurrer - w^d? the jury
 is bound by it? - are there any legal decisions to justify the
 practice of suing out a writ of error by the state? The case of
Clappersmith & Co in 1793. ^{Case} Pres. seems to have been bro^u before the
 Ct. for obtaining a construction to an act of assembly. Does
 not appear that there was any argument - No objections
 made & seems to have been a mere formal judgment.
 The judgment was reversed & nothing further was done.
 No auth^o can therefore be established from these cases.

The idea of a writ of error by the state in any state in the union
 never prevailed. This inform^o derived from the legal character of
 several states, particularly Virginia.

But Sir Wm Jones has been produced. The judgment was
 in favor of the King. Why sh^d? the King reverse his own judgment? The
 principle is no one can reverse a judgment in his own favor. The
 writ of error must have been by the Marquis of Winchester. What
prejudice had the King in the judgment? What was the character of Sir Wm
^{in select cases in Chancery.}
Jones? Cro. Car 504 J.B. Error to reverse a judgment for the King.
 meaning the judgment was for the King - not that the writ of error was by the
 King. Rolls is said to have assigned the error - He was not the assigner
 & was counsel for the Marquis of Winchester. The error ^{opinion} was for the King.
 The error assigned were overruled - but bro^u? the judgment was to the
 prejudice of the King the assigner consented to the reversal
 1 Hawthorn 25 also Cro. Car 504 & considers it a writ of
 Error by the party.

2 Bac. ab. 453 ^{also cited in W. Jones} If one be convicted &c.

The reason given will show it was not a writ of error by the King, said the party not instructed &c. - The note to the case is that the King by his atty Gen. signifying it might be reversed. -

It is the mode by ^{the King} dispensation his pardon by permitting a writ of error to the party. - The practice modified by Resol. of the Judges in Reign of Anne. -

1 Chitly C. L. 574 (747) a writ of error lies, &c. This shows

the reasons of the case in W. Jones.

There is no case then where a writ of error was ever bro^t by the crown. Nothing in Hale to the contrary notwithstanding. Viner referred to the case of W. Jones. Not intimated in any author or writer upon the subject of writs of error to show the crown c^d. bring a writ of error. If it had been that it might w^d it not be mentioned by some of these writers. Hale merely intimating that it w^d. lie - He referred to no case to justify his dictum. The books are not silent upon the subject of writs of error by the crown in civil cases - What is the exception given w^{ch}. writ of error by the King in crim. case? Because it is said the opⁿ. of the 12 Judges may be had. How does it happen that the crim. law is not settled in the same way where Judg^s of conviction - Innumerable instances of reversals in crim. cases - Why not, forbear to pronounce opⁿ. in the one case as well as ~~the~~ ^{without consultation} the other. - No reason for supposing they do not reserve questions in all cases.

Hale 47. speaking incidentally on the subject of plea &c.

The subject of writ of error was not before the c^t. - The year book cited cannot be obtained so as to ascertain whether there was any question that a writ of error lies for the King. But ~~for~~ the assertion of Hale is unsupported by

any decision or auth? - 16 48 - conclusion on the thing until reversed
no auth? cited - The conclusion is that h^d Hale was mistaken & that
he has illegally expressed a principle of law unsupported by any other
auth? & is not law.

as to the practice of writs of error in crim. cases it is
questionable how they are obtained - Whether the criminal,
in all cases may sue out writs of error without the assent of the
attys gen. according to the rule in the reign of Anne. If no
restriction every crim. to get him

Writ attys gen. ^{u.s.} explains the cases of Mepersmith & others. It appears
that the Judg. must have been for the fine - for casu ipi? for the
fine & costs.

This Ct. not bound by the practices of the gen. Ct. - where only
solitary instance shown.

act 1785 Ch 87 ^{or any} might have inferred to embrace the
proceeds for issuing for the fine - there is no Judg for the fine.
The Judg is reversed & nothing further done - The attys gen. indicted
the Casa for the fine - Whether p? or not does not appear as
there is no return of the writ.

Will take up the question of this court's jurisdiction
upon the subject as next in order.

If this court has no jurisdiction, then it will
be wholly unnecessary to decide the other point as to Conspiracy.
The first count in the Ind. is to defraud the bank & an
accomplishment of the fraud - The 2^d count sets out the
means used, but does not allege that the fraud was effected.

The manner in which the persons charged is novel
The only case of an unqualified breach of trust has been
charged as a cheat ^{as an individual cheat effected by a} or Conspiracy - The charge is take &
embezzle &c. in violation of their duty & trust. Yet said they are not

charged as officers of the Bank - The expensions are so being
Presid. &c. did conspire &c. to obtain embuzzled - caused
false entries to be made in the Books of the Bank - The Ind.
throughout charge them as officers of the Bank - as violating
their trust & duty, ^{and the oaths taken by them} as what? clearly a Presid. & cashier.

The line of distinction between the Gov^t of the U. S. &
of the state sh^d be known & preserved, so that neither sh^d
interfere with each other. This is important to both.
and to judge correctly must draw in aid all the lights
to be obtained on the subject.

so far as the ^{constitution} Congress has given to the ~~Judiciary~~
Congress Jurisd. in crim. cases it is taken away from
the states. The first act of Congress, ¹⁷⁸⁹ left some crim.
cases unacted on. Congress might instead of giving
concurrent Jurisd. in state c^s, might have retained
exclusive Jurisd. to the Jud^t of the U. S.

1st Sect 3 art. Const. of the U. S. establishes
the courts - "The Jud^t power shall be vested &c. - all the
Jud^t power vested in the Gov^t shall vest in the Jud^t
power - If in the Judiciary of the U. S. it cannot be
in the state courts.

2^d Sect 3 art. carries out the Jud^t power
wh^{ch} was to be vested in the cts of the U. S. - Extends to all
arising under the Const. clauses of the U. S.
cases &c. to controversies &c. dropping the word all. In
maritime cases the state cts are excluded & no state can take cog.
in maritime & admiralty case. - This being so no crim. case
can be within the cog. of state courts - For the same reasoning
applies to crim. cases as do to admiralty & maritime cases.

But said were Congress has not legislated upon the subject of
 some crimes, the state autho remains - Why not the same in
 admiralty cases - 5 Vol. U.S. Index tit. Judiciary pl. 31.
 page 262. - This District shall have exclusively of all crimes &
 offenses &c. cog. under the autho. of the U.S. where the
 punishment does not exceed ⁵ - also exclusive ^{and} maintenance
 Does not define what are maritime cases - as to the residue
 of the crim. jurisd. Id. 268 pl. 63 The Circuit Court shall
 have orig. cog. concurrent with State Ct's to certain ^{in civil cases} ~~cases~~
 and exclusive cog. of all crim. cases except where otherwise
 provided, such as granted to the District or specially by act of
 Congress - Here the whole crim. jurisd. of the U.S. is
 granted exclusively to the Ct's of the U.S. unless it can be shown
 that Congress by law has made a provision to the contrary.
 But said that this grant was only of such crim. cases, as
 arose under acts of Congress. ^{then passed} It is clear it included
 all cases arising ^{which might arise} under the Const. Laws of the U.S. - If
 therefore an act becomes crim. under any act of Congress
 it belongs to the Ct's of the U.S. ^{all offenses} by the autho. of the U.S.
 not ^{relating it to} the acts of Congress which were in existence at the time
 the act of 1789 passed.

How far the opⁿ that the U.S. has no com. law
 is to be considered as high authority - and that where the Congress
 has rejected ^{any} the com. law offenses it is reserved to the
 States - contends that if the U.S. has no common law &
 this case omitted to be provided for, it remains dormant
 & cannot be prosecuted in the State Courts.

7 Cranch 32 U.S. v. Hudson & Gooding - has been
 cited to autho. to show the U.S. has no com. law. This was
 a case of Rebel & the Com. Law punished whether true or false?
 The Judge to get out of the difficulty of the case held there was no com. law
 provided to the Ct's.

It is evident from all the cases cited that the Supr. Ct. are desirous of hearing another argument on the subject & to decide de novo on the question.

In the case just cited the Ct. refused to agree the case - How could be urged to substitute the com. law in the place of the old sedition law. - The op. of the court was delivered by Judge Johnson. Examine his reasoning. The powers of the gov. are made of conceptions from the several states. Why not a grant of the com. law of means for the powers of the gov. - The states had the com. law power as well as others w^h they conferred if the com. law power was not reserved by the states then it must have been conferred upon the gov. Gov^t. Not described what judicial power was conferred - meant the whole w^h the states had to pass with that w^h had been transferred had passed. - It is evident the states could not grant one without the other. No idea of jurisdiction wth the com. law. This case says the com. law not applied to crim. cases in the Ct. of the U. S. yet in civil cases it does - How take the com. law in civil cases & not in crim. cases. But said the Ct. of the U. S. has the com. law form of proceedings, but not the com. law remedy in crim. cases, admit that when congress give jurisdiction that they may annex the com. law & where they legislate then it is a statutory and com. law remedy. - In debt must refer to the com. law - In assumpsit &c. could not give remedy unless resort to the com. law. When is the maritime jurisdiction taken from unless from the ^{maritime law of England} ~~the constitution~~ - for there is no act of congress regulating the jurisdiction. But will be said it is violation law - no matter it is in

fixed by Congress - must refer to the English code - If refer to
 that code for that purpose why not to the con. law in crim. cases

To make the most of the case w^{ch} was not argued - is also
 the case in Wheator 415, U. S. v Coolidge - when it is said
 the Ct. are not satisfied with the decision in Crouch (were)
 willing to hear an argum^t - The question therefore seems to be
 open for further decision -

But said this is an offence committed in the state
 & therefore cog. by the state courts - It is an offence committed
 by persons on an Institution of the U. S. ag^t the law of the
 U. S. in derogation of the act of Congress creating the
 Institution - The offence charged is to defraud the Bank of
 the U. S. by persons holding situations under an act of Congress
 This state has no more to do with the offence than any
 other state in the Union - It is an offence, if one, ag^t the
 U. S. what law violated? Is it not an act of Congress
 under w^{ch} the duties imposed on the persons w^{ch} has been
 violated: a citizen of this state not bound to know this act
 of Congress more than any other of the U. S. - Violating ^{this law similar to} any
 other act of Congress. admit that the state gov^t retain
 all power not granted to the fed. Gov^t - But is it attempted
 to show that Congress had not the right to charter the Bank

But said to exclude the Jurisdⁿ of the state courts, in
 crim. cases, Congress must have given Jurisdⁿ exclusively
 assigned to the Ct. of the U. S. that as no tribunal had been
 assigned to try the offence, ^{here charged} ^{not} ^{indeed} ^{namely} the offence in the
 charter, it remained in the state - That the state reserve
 all rights thro granted, until legislated on by the Congress. and
 the Bankrupt law influenced - But cannot impair the obligⁿ
 of contract. When Congress does w^{ch}? Then the states cannot - But
 said when offence created by act of Congress, w^{ch} it not agreed how

the ct. of the state may punish. ~~That they~~ The same act may
 be punished by both ct. but not the same offence. To
 push it farther the barrier between the two courts are
 broken down - might punish a man twice for the same
 offence - & the consequence w^d be that both ^{ct.} punishing
 one individual for the same offence at one &
 the same time - For instance where in robbing
 the mail murder is committed - may punish
 the robbery in ct. of the U. S. & the murder tried
 in the state courts - Congress has no right to say
 that killing a man in Maryland is murder - that
 belongs exclusive to the state. Congress has said if in
 robbing the mail the driver is killed, then the offence
 of robbing the mail is enhanced in the punishment
 Robbing the mail is no offence of the state - yet a robbery
 in the state is an offence of it, but it must be of ~~whichever~~
~~not committed~~ some individual ⁱⁿ the state, not ~~touching~~
 declared by congress as offence of the U. S.

Could the legist. of the state interfere with the
 concerns of the Bank - If they c^d. not then the fedl. power
 has no control over it. The state cannot tax the Bank
 nor can the ct. punish for any offences committed in
 it relative to the affairs of the Bank. It w^d be giving the
 ct. more power over the bank than the legist. has - c^d
 the legislation pass a law to punish ^{any} offences of embezzlement
 of the funds of the bank or ^{upon} any improper conduct of the officers
 of the bank - If can do one it can do all - McCulloch vs The
State of Maryland. Shows that no such power exist in the state legislature

This court might with the same propriety control the Custom House officers of the U.S. & determine when they had done they had not complied with the Law of the U.S. - Supp. the Gov^t of the Union as it formerly was held in the body of a state & the feet of the Treasury was to appropriate mo. to his own use &c could the state interfere - If the st had the power then the Legislature could make any act committed by the officers of the Gov^t to be offences of the state. A right to legislate in any case respecting these officers, they can legislate as to all matters.

(Does not these persons charged hold the prop. as officers of the Bank have not all the offences charged against them as officers of the Bank - This is a plain attempt to convert a civil action into a criminal conspiracy - The Cashier given bond for the faithful perf. of his duty - not to misapply the funds of the Bank &c - The Bank are now pursuing the Cashier for the very bond for nonperf. of his duty.

The remedy provided by Congress for the ^{not} maceration in office is on the bond of the Cashier - Congress, having made the act criminal, no other tribunal ^{can} make it so.

Wheaton's Dig. 198 tit. Constitutional Law pl 192

§ 193, 194 (no part of the crim. Jurisd. to 196 inclusive - ^{pa. 110 pl. 201} ~~pl. 110~~ the remedies in the Ct. of the U.S. at Com. law & Equity, not according to the practice of the state Ct. but acc^o to the com. law of England.)

Houston v Moore, Wheaton 1

The order for the writ was in from the state officer. When at the place of rendezvous then the writ was issued under the Jurisd. of the U.S. Having refused to appear it was an offence of the state. A majority of the judges in this case gave no reasons they only occurred in the Judg. given. They might have been influenced by the reasons now stated. Washington, J. page 22. He says both Gov^t cannot legislate upon the same subject. Wheaton page 24. When the state Gov. have concurrent &c they may legislate if not inconsistent. He professes to give his own & not the opⁿ of the court.

If Judge Story 68, 72, 74 illustrate the doctrine contended for by this
 It has not prevailed.

As to the Doctrine of Conspiracy - The reason why
 the Dist. demurred to the Ind. arose from the non attendance
 of a material witness for their part. - They were therefore put
 to the alternative of going to trial with this important wit.
 or to Demur - They therefore adopted the latter course, altho. that
 it was not a matter of choice. -

Diff. to comprehend what is contended for on the
 part of the State - said under the Com. They view the question
 in two ways: - under the Com. law. and under the Stat. -
 seem agreed that the Stat. of Edw. 1 is the
 earliest trace of this doctrine - That Stat. provides for
 a final definition of a conspirator & does not intend by its
 terms to create an offence - to declare what the law
 is - who be conspirators - They profess to give the law on the
 subject - They do not profess to exclude any ~~the~~ offence -
 If a law professes to make a final definition of Consp. then it
 is a repeal of all previous law on the subject - This Stat. has
 done this. - This being the case have any subseq. acts of parliament
 made any innovation of this Statute? If this Stat. has lopped
 off all the Com. law on the subject & legislated on the subject, then
 the Stat. law is to govern & there is no Com. law to govern - &
 cannot be enlarged upon by the Ct. to make that conspir. wh. is
 not provided for by this Stat. - No Com. law offence can be
 created when once excluded by Statute. -

Within all that period wherein decisions have
 correctly taken place on the doctrine, Ct. have rather narrowed than
 enlarged the principle - But said immediately after the Stat. then

one case where this offence was extended beyond those enumerated
 in the Stat. - To prove w^h. the Book of Offences has been cited - The
 first case is in (22 Edw.³) in page 102 pl. 77 a comp. to indite a
man. This is within the statute - The next case is (26 Edw.³) page 131
 pl. 62. Comp. for pleading a false plea. This, tho' denied to be, is clearly
 within the ^{words of the} stat. - next case (in 27 Edw.³) page 134 pl. 12 Comp.
 for causing a man to be indicted of felony - Can't be denied that
 this is within the statute - 36. 1 same y. 137 pl. 34. Comp. ^{confes. bound by oath} to maintain
^(the other is in the quarrel, false) ~~each other~~ whether true or false - meaning pleas or debates, ^{quarrels} ~~fact~~
 touch where term applied to quarrel alludes to false pleas, and
 comes within the stat. The case is partly rep. might have been Stewart,
 respecting his lord's est. - 36. 141 pl. 59. Comp. w^h. involved a
 villainous judgment - The nature of ^{the comp.} it is not mentioned. 36. 146 pl. 72-73
 comp. to cause a false return to be made on a writ. This was
 to move & maintain false pleas within the words of the stat. 36. 144
 pl. 74. So clearly to move & maintain false pleas 36. 146 pl. 12 (28
 Edw. 3.) comp. of Adam with others - The others were acquitted &
 hidden the others were acquitted, so th^t? Adam be -
 a distinction will be attempted, ^{to be a p^{er}} between confederators
 and conspirators - By the stat. they are the same - It makes
 a confed. a conspirator - The law makes no distinction of the
 them up two distinct offences - No matter if there is
 a distinction. The diff^s are not indicted as confederators
 but as conspirators, and no law if any respecting confed. w^h.
 make it diff^s will not apply to the case before the court -
 at most then it is an Ind. for two distinct offences in one Ind.
 36. 177 pl. 21. (30 y. Edw.³) Half alliance & comp.
 to indict ^{divers persons of divers} ~~one~~ felonies -
 36. 238 pl. 19 (39 Edw.³) This was attainting a jury for
 giving a false verdict taken in. - This was under a stat. providing a
 punishment for the very offence

442
26. pl 12 (40 Edw? 3). Here there was a villainous J. D. V.
and stated what was the offence -

All these cases are under the stat. of offence of
maintenance -

~~26. 137. pl. 1~~

26. 138. ^{pl 441} ~~139~~ (27 Edw. 3). Proposer to give articles of

offences to the judges are to inquire of in their
circuits - The 5 & 6 art. of the Inst. to ^{be attended to} ~~enquire~~ those
~~who~~ art. 5. cont. offences within the Stat. to
maintain their malicious interpleges - Note. two Ind. of comp.
each to maintain the other whether the matter be true or
false - This embraces every branch of the Stat. includes
to maintain false pleas & all other matters good or bad -
6 art. so comp. or confed. ^{who bind themselves by oath or otherwise that} each shall aid & sustain the other to
know or maintain false pleas &c. This is precisely in the Stat. -
art. 19. (pay 139 ^{pl 44} ~~139~~) also of murch. ^{comp.} &c. putting the price upon
wool. In this year of Edw. 3. provision made ^{was} by Stat. respecting wool -
so that this ^{case} came under that statute -

Britton 24 Tricks & deceits in trade were
larceny. What has this to do with conspiracy? will be
attempted from this to show that cheating was an offence
at com. law. - Is that the law of England now? if it ever was?

Cheat at com. law was by false public tokens -
cheats of the public, sac. of public concern. - No one at
enumerated by Britton punishable at com. law now.

Cowell's Inst. - Forgery ind. at com. law, in 1630 to 1660

Moore's Rep (in 1607) Lord Grey's Case, 788 page.

This nothing more or less than maintenance w. punishable
by statute. No judy. given - men obiter dictum. in the latter Case

(lettered case) 443
Moore 562 is another case of Maintenance (41042 Sleg^o)

16. (Scrogg etc -) also another case of Maintenance or a comp. to bring a false bill in Chan. within the terms of the Stat. to move false pleas.

16.813 The Poulterers case, cited in 9 Coke⁵⁶ It was a civil action by the Dist. for a comp. to ^{attempt to} cause the preft to be indicted of perjury - W^t was within the Stat. - The action not maintained b'c. he had not been indicted - but if they might be indicted for the confed. or comp. to charge a man falsely, tho' not indicted. - Don not mean can take notice of intentions not executed or attempted. This instead of being a law of mercy w^d be a tyrannical law. - But said when a fault with intent to murder, the offence is the intention. How he did not forbear but persisted - The offence is aggravated with the intention to murder - The Stat.^{of 13} confines the offence to the conspiracy; ^{It is comprehensive - But} The principle to punish for intentions w^d be the most absurd tyrannical doctrine ever tho' of -

No man more learned upon the ancient law of England than Lord Coke. How he limits the offence of comp. exactly within those enumerated in the Stat. - If there had been any com. law on the subject he w^d have stated it. He speaks of confed. to have four incidents - the making Confed. & comp. to mean the same thing. So in 3 Coke's Inst. 143 where comp. is defined. He does not include any comp. not in the Stat. tho' some in the Stat. he does not notice; b'c. no doubt they had ceased to exist. Conclusion is strong that there was no other offence of Comp. either by Stat. or com. law than what mentioned by L^d. Coke.

Stoy's Rep. 103 (1615) Not stated to be a comp. but it was for suppressing of a will - East in 823 Supp^o is to be a comp. Strange licence given in the Star Cham. to dispense justice in any manner they chose - Who is ^{it} that gives the report as we see but Stoy extract from his reports. Star. Co. Litt. simple called

1 Keble 203. 254. 271 S.C. The crime is the conspiring

⊕ 6 Mod. 186 Best's case (1764)

1 Salk. 174 S.C.

These are all the cases of ^{charging for} ~~with~~ having bastard children - They are Comp. to charge a man with an offence to defame or disgrace him. It was ^{It is an offence which may be proved very fairly within the Statute} an Ecclesiastical offence. In 3 Wils. 330, Keble

is charged as being an inaccurate reporter -

2 Holt in 6 Mod 186. To charge one falsely is charging in a court of justice - otherwise to say a man had black hair when he had brown w^d be indictable. Salk. says persons may lawfully meet to prosecute a guilty person - but to charge one falsely is an offence. To prosecute a man right or wrong - means a legal accusation.

The next class of cases

1 Siderfin 174 The Inbrowmens Case, (1664) 1 Levings 125 S.C.

1 Keble 655. 675 S.C. - This case exemplifies the ^{substance} ~~substance~~ with law was dispensed to favor the crown. Brewers combined not to brew beer upon which the revenue operated. It was the Kings revenue given him by parliament in lieu of the wardships &c. - He was greatly in want of money see Fox's Hist? This clearly a political case & is not to be regarded as any auth^o - Upon this unjust case all the other cases were bottomed. Is this a fit case on which to sanction such a doctrine? By impoverishing the farmer, the King lost his revenue.

Tremain Precedents has been referred to & relied on. They were selected from the worst times 1675 to 1686 the worst & most atrocious times of Jeffries.

only necess: to condemn the proceed. to show that they
were of cap. while Jefferson was ^{absent} Judge & during such a
reign.

6 Mod. 99. Ind. for enticing away a few ^{to}

Holt Ch. J. 100. a private wrong to the master -
He says agent to do an act but w^h not done is not indictable
He limits & restrains the doctrine of Comp.

8th 9 Mod. 11, Journey men Tailors case
Geo. 1: (1721) - Comp. to raise their wages - said to be
an offence of Comp. at com. law & refers to the
Subwomen's case - The simple comp. to do an act
is said to be punishable whether executed or not. -
This out of the range of every principle - The ^{tailors}
met & agreed, but did not carry their intention
into effect & yet said they sh^d be indicted for it. -
Can this Court sanction such a principle - said
to be at com. law - yet no ^{case at} com law shown. - 2 Jac.

L. D. tit. Conspiracy 30 showing there was a stat. act.
such combinations to raise wages &c. -

This reporter not good auth. Burr. 386

1 Burr. 153 - Hoffman, ^{L. J.} 257.

1 Stra. 144. The Cardmaker's Case

The original cause of Comp. was retraced by the Stat. of Edw. 1.

1 W. Blk 392, Cocklan Ghost, King & Parsons et al

Ind. Comp. to accuse of Murder - This said ^{to} support the principle to

extort money, is indictable - not stated here that it was to extort money.
This is within the Stat. of Edw. 3 where it was to accuse a man of murder
tho' the means of a ghost. Look to the condemnation, on acct. of witchcraft.
a superstitious jury might condemn on false evd.

2 Burr. 930. 993, King v Spragg et al. Comp. to charge

with a capital offence - ^{felony} - alleged to take away his good name &c
This case goes to show what is meant in the bastardy
cases, to take away his good name &c.

6 Mod. 185 King v Best, before cited - comp. to contrive &

agree among themselves to charge J. with being the father of a bastard
child - what meant by charge & to or before whom made? might
be by a clergy man with intention to admonish &c. ^{a good latitude may be given to the term; but} if it has a
specific appropriation - then must be to charge him in a Court - in a
legal sense - 2 Holt seems to say did not require an infamous jury

where ind. only when a criminal or attempt - he is mistaken in subj.
Comp. in civil for crim. case. he evidently intended ^{care of} falsely
to accuse of a crim. offence - And it seem to the whole Court ~~that~~
the very agreeing to gether to charge a man falsely ^{is a consummate offence}
and is indictable, viz. with being the father of a bastard child &c
The charge to extort money was mere incidental.

S. 2 d. Regm. 1167 Queen v Best. mag. note. an illegal &c

Comp. to charge a man with a spiritual offence - for w. he
may be punished in the spiritual Court -

This same case is differently reported by diff. reporters -
But all show it was the offence.

3 Burr. 1320 (King v Bishop) Comp. to charge &

accuse J. B. for taking human hair out of a bag &c - must have
been to charge for falsity diff. it is within the Stat. falsely to accuse of
felony - If not it is with a trespass - must be a felony or trespass
not indict for a trespass will not be contumacious.

King v Benfield & Vandeu, 2 Barn. ~~408~~ 980 - Does not seem to be
a consp. or intention to extort money

Stra. 193, King v Kenersley & Moore. Consp. to

extort ~~and~~ charge a man with an odious crime. To
say it was to extort m^o. did not highten the offence.
To form the consp. under the stat. is the offence if m^o
was extorted ~~that~~ it was an offence - But the attempt
to extort m^o. is not the offence. - Whether it was for
revenge or to extort m^o. was immaterial, if there was
a conspiracy to accuse of the crime - ^{as that}
at com. law there is no such offence ^{to}

extort m^o.

Next attempt is to show that to impoverish

a man is indictable - This doctrine seems to have

arisen from the Subwornens case, 1 Siderfin, 174
for a confederacy
wh^o was to help on & impair the things revenue. yet in
the margin said to impoverish the farmers of the Kings revenue

In 6 Mod. 100 King a Daniel } D. Holt refers to the

Subwornens case & says it was ^{an offence} ag^t. the Gov^t for impairing
the revenue & he does not say it was to impoverish the
excise men, the farmers of the revenue. - If this be criminal
what is it that is not criminal? The brewers agree to
give up the brewing beer & yet they are to be indicted for it
so strange a principle was only suited for the times when
the decision took place. It is not suited to this country or
to this court to regard it as law. - A consp. w[?] with more propriety
be legal ag^t those who consp. agreed to lay the tax & drive the brewers to
give up brewing.

McLain's case. Comp. to keep & drive him from the stage -
 No principle to be extracted from that case at all applicable
 to this country. It was at most a riot at the playhouse &
 as such ind. as a riot - but not as comp. -

King v Eccles, 1 Leach C. L. 274 Ind. Comp. to
 impoverish &c. If this case is taken for auth. then to comp.
 not to employ a mechanic is said not to permit ^{him} to work at
 his trade. If one will not employ it is no offence - yet if
 two or more agree not to employ then it is comp. Taking
 it in its broad & extensive sense then there can be no
 agreement which is not indictable - The rule given by the statute
 is a safe & good rule - but depart from that rule there is
 no end of the ^{danger of the} principle. - It is not the object or means
 to be accomplished but separately done it is no offence,
 yet when combined & agreed it is an offence - This is the
 principle of the Subworkmen's case. Two men doing the same
 business meet together & talk of the price at which they work &
 one says the price sh^d be so & the other agrees with the other in
 op. & ^{the act} ~~the act~~ ^{is in itself} ~~is in itself~~ ^{of this principle best appears} ~~of this principle best appears~~
 the act the comp. of mod. II (second pt. is 9 mod) Journey men tailors
 which also refers to the Subworkmen's case. The principle is
 one which would never be submitted to in this country. To say
 that which one man may do is crim. if done by two or more, is
 a principle repugnant to com. sense & not tenable.

The King v Eccles is based upon the Journey men tailors case as
 to the principle of impoverishing - And the Journey men Tailors
 case is bottomed upon the Subworkmen's case.

1 Stra 1161 Cardmakers case before cited. Comp.
 to put grease into the ^{parts of the} cards to spoil them. To injure & ruin the business

It was nothing more than ^{a comp. to commit} a trespass. a remedy given by civil action for redress came within the cap of Turner & H. Ellenbrough.

2 Campb. 358 ^{Clifford} ~~vs~~ ^{vs} Brandle - Question came

on incidentally on raising the price of admission into the theatre - The Ct. say obiter to do this is crim. This cap is clasped among the caps of Comp. to impoverish -

3^d. The next novel princip^e - for ^{a comp. to} several to do together what each might do individually is criminal. It is found obiter in the ^{Journeymen Tailors} ~~subornment~~ case w^{ch} refers to the Subwomen case. If there is of no auth^y. If not there then the Journeymen Tailors case is no auth^y. They are unjust improper interlopation of the law

4th. The principle, the Comp. per se is criminal altho' nothing be done in pursuance of it. all the caps assert this principle if the law of Comp. is to be received.

The 5th innovation ^{of the old Com. law.} is that a Comp. to cheat is criminal ^{at Com. law.}. This first mentioned ^{was} in Wheatley's case ^{vs} Manfield's dictum in Burr. - 5 Mod. 179 was referred to ^{as} Table the principle w^{ch} was ^{an} upon a Statute. In that case found two may be indicted for a cheat, if recog. by Com. law or Stat.

7 Mod. 37

6 Mod.

Hing v ^{cit^d} 2 East C. Law 823.

2 L. Raym 1179 S. 6.

No charge of a Comp. to cheat. sole

question was whether the act was a Cheat either under Stat. or at Com. law. Now it then is a doubt if it was clear that there C. or Ind. for Comp. to cheat.

This case is principally relied on to establish the doctrine that
 there is a comp. to cheat. — Here was a cheat by false tokens
 If no charge of Comp. how could J. Dennison say it was a conspiracy
 J. Rede said pretending to be a merchant was a false token & a
 cheat by a false token is punishable as an offence & highly
 criminal — This under the statute of

The auth. are the precedents from Tremain &
 as to the auth. of those precedents as before spoken of
 there is no report of any of the cases from which the precedents
 are taken. These precedents are quoted as the earliest
 auth. of the doctrine that ^{comp. to} cheaters were punishable
 at com. law — Yet of the various reports none of them
 are noticed —

An. novelty introduced is that a comp. need not
 be proved, but may be inferred from the acts. Yet the
 acts are innocent may infer a comp. to do them so as to
 create an offence —

These are the great principles of innovations which
 have been introduced — They do not accord with the decisions
 before colonization as appears from the cases which have
 been produced. — They were interpolated since colonization
 in the decisions in the Star Chamber — The statute looked
 to enormous crimes & offences & subjected intention to
 punishment.

Take the principle as laid down by some of the cases
 then no human being but has been guilty of a conspiracy —
 for instance Mauld & Belwyn, Abbott, Ch. J. may be ind. for
 comp. to cheat altho' now they intended to cheat was not fixed
 on. Can this be shown in the statute.

As to the definition of Conspiracy. Hawk. 346 he says for the better understanding &c. 1 A better rule than Stat 33 Edw 1. The intent whereof was to make a final definition of Conspiracy. 16. 148 he makes a definition and also reformation for it - "also it seems &c. upon the com. law - for all confed. ^{wrongfully &c} are highly ^{criminally} ~~wrongful &c.~~ This cannot be true - ~~the~~ wrongfully to prejudice by deceit is intended to be substituted by the app. counsels. If limited to deceit it w. be excluded more enormous offence - see Hawkins' examples - to improve it a 2^d purpose, he refers to 1 Sid. &c. ~~now of the~~ ^{the} subwomen's case. -

3 Burr. 1434, Delavall's case. Principles are stated & are highly objectionable - J. D. Mansfield says it is the Custor morum of the ^{Kingdom} of all cases not within the Ecclesiastical court. The Com. had been carried into execution. The Ct. turns the young lady loose who went back to Delavall's house. & the Ct. as the Custor morum is unable to prevent the young lady from continuing in her prostitution. - as Custor morum is to punish offences ag. the law. & nothing more. -

As to the com law, 2 Reeves Hist. 244. says the Stat. off. ^{of Henr 2} are consid. as the found. of the com. law. - The com. law nothing more than Stat. long since lost &c. when their principles have been bas. d. & done by Jud. decisions.

Nothing in any decision before colonization w^h can justify this prosecution. — The Emigrants lost with them only the Com. law w^h was suited to their situation. — No jud^l decision in this country of a prosecution for a conspiracy except a statutory case in the Court of Op^{er} Determiner in Balt^e?

If we are emancipated from any part of the Com. law, ~~if so~~ what part ^{is it} are we bound by all? If not, why are we bound by that now insisted on? — Must have ceased by that — non user or a jud^l decision saying it does not prevail. — Is the doctrine applicable to our situation, or was it ever applied?

Has there been any stat. abolishing Maintenance

This is a doctrine connected with that of Conspiracy — Is it an offence here? — Can any case be shown when acted on — It is every days practice among the profession tother — an agr^{mt} to take a certain part of what might be recovered in an action — This has been tho^t to be inapplicable to our situation —

Charyperty — is that a doctrine here? — The right to deny a crim. to have counsel never acted on here

M^utrial by Battle, Is that so here — There is no Statute abolishing it. Yet it prevails here. —

Appeal of murder. Has been practised here Yes

Attaining a Jury - writ of right - no practice here - not that it is abolished.

Market overt. Held not to be applicable

Truth no justif. in libel -

Seduction of women

Barrenry of fruits &c.

Outlawry - [plenty of them]

Attaind before the Constitution

They have all disappeared? How - By non user - This it cannot now bring them forward -

Giffitt v Giffitt & Coomes et al.

Clements - Mis. adopted a com. law not now in use in England - Why adopted, bet. our ancestors professed to have bet. that with them.

Will it be said the diff. various modific^{ns} of a law wh. never applic^d to our situation is to be extended to the State! - It w^d? be taking men by surprise & punishing him by a law of wh. he had have no knowledge -

There were cases in Batt. one of a comp. to raise
 to accomplish. the ground not stated ^{or it would be clear}
 wages & he'd not to lie_n - an^r. a comp_n for getting
 a man in their possⁿ & committing forgery - perjury
 & obtaining an att. - perlonating the Sheriff &c.
 kept the man until they compelled a man to execute
 a deed of all his property - No person intefered
 to shield the crim. from punishment - It was
 an atrocious case involving forgery, perjury &c
 If a comp. it was completely within the statute.
 It is a solitary case by an inferior tribunal

Argument continued on in Note Book

No. 17