

the insufficiency of the judgment... the judgment of acquittal... expressed. And again in page 38 of the same book, and in the case of the judgment had been so... could never again have been... for the same offence, not... standing the defect of the indictment... till that judgment reversed by... of error. Hence it is manifest... in the opinion of Lord Hale... King might have a writ of error... a criminal case, since it would... absurd to say that a man who... obtained a judgment of acquittal... a defect in the indictment, or... special verdict, could never... be indicted for the same offence... till that judgment reversed by... writ of error, if a writ of error... not lie. Fortified by such... alone, in the absence of any... subjective provision in this statute... subject, we think we might... say, without further inquiry... of the writ of error in these... properly sued out. But instances... are not wanting of writs of error... being prosecuted by this state... criminal cases; as in *The State vs. Messersmith & Askev*, *The State vs. Forney*, *The State vs. Brown*, and *The State vs. Durham*, in the... of over and terminer &c. for... more county. In each of those... there was a demurrer to the indictment, and judgment on the demurrer for the defendant, in the... below. They were all taken to... late general court on writs of error... by the state. *Luther Martin*, attorney... general; and in each case the judgment was reversed. And there is... sufficient reason why the state should... not be entitled to a writ of error in a criminal case. It is perhaps a right... that should be seldom exercised, and... never for the purpose of oppression, or without necessity; which can... rarely, and it is supposed would not... happen, and would not be tolerated... by public feeling. But as the state... has no interest in the punishment... of an offender, except for the purpose... of general justice connected with... the public welfare, no such abuse... is to be apprehended; and as the power... of revision is calculated to produce... a uniformity of decision, it is... right and proper that the writ should... lie for the state, in the same proportion... as it is essential to the due... administration of justice, that the criminal... law of the land should be certain... and known; as well for the government... of courts and information to the people, as for a guide to... who, tho' (by the laws and practice... of the state) they have a right to... judge both of the law and of the... fact, in criminal prosecutions, should... and usually do, respect the opinions... and advice of judges, on questions... of law, and would seldom be found... to put themselves in opposition, to... the decisions of the supreme judicial... tribunal of the state.

It has also been contended that the return of the writ of error in this case, supposing the writ to have been properly sued out, is defective in this, that it is not under the hand and seal of the chief judge, but that there is only a transcript of the record sent up, under the hand of the clerk and the seal of the court, with the writ of error annexed. But there is nothing in the objection. By the fifth section of the act of 1713, ch. 4, "for regulating writs of error, and granting appeals from and to the courts of common law within this province," it is enacted, "that the method and rule of the prosecution of appeals and writs of error, shall for the future be in manner and form as is hereafter mentioned and expressed; that is to say, the party appealing or suing out such writ of error as aforesaid, shall procure a transcript of the full proceedings of the said court, from whence such appeals shall be made, or against whose judgment the writ of error shall be brought as aforesaid, under the hand and seal of the clerk of the said court; and seal thereof, and shall cause the same to be transmitted, to the court before whom such appeal or writ of error is or ought to be heard, tried and determined," &c. The preamble sets out "forasmuch as the liberty of appeals and writs of error from the judgment of the provincial and county courts of this province, is found to be of great use and benefit to the good of the people thereof;" and the second section provides under what circumstances alone, an appeal or writ of error shall operate as a superaddition. The act is silent on the subject of the return of the writ of error, and only directs that the transcript of the proceedings shall be under the hand of the clerk and seal of the court, without dispensing with the signature of the judge, as the return of

practice in the Court of King's Bench on a writ of error brought in parliament, and affords as much certainty of a full and perfect transcript of the proceedings, as a return of the writ under the signature of the chief justice, the course usually pursued in the Court of Common Pleas, in relation to writs of error returnable in the King's Bench. These preliminary questions being thus disposed of, the next presented for consideration, is whether the facts stated in the indictment, amount to an offence punishable by the laws of Maryland. This is denied on the part of the defendants in error, and much reliance is placed on the statute 33 Edward I. de conspiratoribus, on the supposition that the offence of conspiracy, was originally created by that statute; or if it was a common law offence, that the statute either contained a definition of all the conspiracies that were before indictable at common law, or annulled the common law, and rendered dispensable all conspiracies but such as it defines. And if either position be correct there is an end to this prosecution, since the matter charged in the indictment is clearly not embraced by the statute; and if it was, the statute being considered as not in force here, the case would not be helped; and there would be no law in this state, for the punishment of conspiracies of any description, there being no legislative provision on the subject. But neither branch of the proposition, will on examination be found to be true. The statute is in these words: "Conspirators be they that do confeder or bind themselves by oath, covenant, or other alliance, that every of them shall aid and bear the other falsely and maliciously to indite or cause to indite, or falsely to move or maintain pleas; and also such as cause children within age to appeal men of felony, whereby they are imprisoned and sore grieved; and such as retain men in the country with liveries or fees to maintain their malicious enterprises; and this extendeth as well to the takers, as to the givers. And stewards and bailiffs of great lords, which by their seignory, office, or power, undertake to hear or maintain quarrels, pleas, or debates, that concern other parties than such as touch the estate of their lords or themselves." Without looking beyond the statute itself, there may be found sufficient evidence on the face of it, to show that conspiracies were known to the law before. "Conspirators be they" &c. Now why should they have been declared to be conspirators, who should confederate for any of the purposes mentioned in the statute, if they were not liable to punishment for such combinations? And if they were, it was for the conspiracy that they were so liable to be punished; as without the offence of conspiracy, there could have been no punishable conspirators. The statute does not prohibit conspiracies or combinations of any kind, it does not declare combinations or conspiracies of any description to be unlawful, nor does it impose a penalty, or inflict any punishment upon conspirators. And if combinations for any of the purposes mentioned in the statute, were punishable at all, it could only have been on the ground, that both the offence of conspiracy (eo nomine), and the punishment, were known to the law anterior to the enactment of the statute; and that the declaring those to be conspirators, who should be engaged in certain combinations, subjected them to the law of conspiracies as then existed. And it has never been pretended, that the combinations enumerated in the statute were not indictable conspiracies. The statute therefore, which had for its object the prevention of the combinations it enumerates, carries with it internal evidence, that conspiracy was an indictable offence before. But the question, whether conspiracies were indictable or not at common law, anterior to the statute 33 Edward I. does not depend alone upon the construction of that statute. In *Oake's Institutes* 143, and 1 *Hawk.* p. 193, ch. 72, sec. 9, it is said, that the villainous judgment is given by the common law, and not by any statute, against those convicted of a conspiracy. Now, this judgment, called the villainous judgment, which was known only to the common law, could never have been given, unless conspiracy was an offence punishable at common law. In the 20th year of the reign of Edward the 1st, a civil remedy was provided against conspirators, &c. by the writ of conspiracy; and the statute 28th Edward I, ch. 10, entitled: "The remedy against conspirators; false informers and em-

bracers of juries," makes this further provision: "In right of conspirators, false informers, and evil procurers of docters, assessors and juries; the king hath provided remedy for the plaintiffs by writ out of the Chancery; notwithstanding he will let that his justices of the one bench and of the other, and justices assigned to take assizes when they come into the country, to do their office, shall upon every complaint made unto them, award judgments thereupon without writ, and shall do right unto the plaintiffs without delay." It must be the provision in the 20th of Edward I. for the writ of conspiracy, to which the first clause of this statute has reference, as there does not appear to be any other, and which according to 2d *Institutes* 59, was but in affirmation of the common law; and these provisions for private remedies against conspirators, clearly demonstrate the existence of the offence of conspiracy. It is equally clear, that the statute does not embrace all the ground covered by the common law. Who doubts, or was it ever questioned, that a conspiracy to commit any felony is an indictable offence; as to rob or murder, to commit a rape, burglary or arson, &c. in a misdemeanour, as to cheat by false public tokens, &c. Indeed this has been conceded throughout the whole of the argument in this case, and the ground mainly relied upon, on the part of the defendants in error is, that the object of the conspiracy charged in the indictment, is not of itself an indictable offence. Yet such cases of conspiracy are not made punishable by any statute, and are only indictable at common law; which could not be, if the statute 33d Edward I. either furnished a definition of all the conspiracies indictable at common law, or restricted and abridged the latter, by rendering dispensable all such as it does not define. This statute is not prohibitory; nor is the existence of other punishable conspiracies, than those which it enumerates, at all repugnant to, or inconsistent with any of its provisions; and according to any known rule of construction, the common law of conspiracy such as it was before, may well stand together with the statute; for surely the merely declaring one act to be an offence, which act as well as others, was so before in contemplation of law, cannot render those others dispensable; nor will one act, which in law amounts to a particular offence, cease to be so, because another act, is merely declared by statute (without any negative words) to amount to the same offence. The statute therefore, must be considered either as declaratory of the common law only, so far as it goes, for the purpose of removing doubts and difficulties which may have existed in relation to the conspiracies it enumerates, by giving to them a particular and definite description; or as superadding them to other classes of conspiracy already known to the law, leaving the common law, in possession of all the ground it occupied beyond the provisions of the statute. And so it has been uniformly understood in England, from the earliest down to the latest decision that is to be found on the subject; otherwise the judges could not have sustained a great proportion of the prosecutions for conspiracy, with which the books are crowded; in some of which, the objection, that the matter charged was not within the statute 33d Edward the 1st, was made and overruled, as will be hereafter shown. In the *Book of Assizes*, 27th Edward the III, ch. 44, it is said, that "inquiry shall be made concerning conspirators and confederates, who bind themselves by oath, covenant or other agreement, that each will support the enterprises of the other, whether true or false;" and in the same book we find this notice of a criminal prosecution: "and note that two were indicted for a confederacy, each of them to maintain the other, whether the matter was true or false; and notwithstanding, that nothing was alleged to have been actually done, the parties were put to answer, because it was a thing forbidden by law." If this falls within either of the provisions of the statute 33 Edward I, it can only be that, which relates to the moving and maintaining pleas, and that does not embrace it; for if a judgment had been under the statute for a confederacy "falsely to move & maintain pleas," which can only have reference to proceedings in courts of justice, it is very clear that the parties must have been acquitted, as the conspiracy was not to do that specific act; otherwise they might have been punished for what they did not contemplate,

since nothing being alleged to have been done, nor consented, that they had any intention, to move and maintain pleas within the purview of the statute, and the intention enters into the essence of every offence. The indictment however, was not under the statute, for either of the specific acts mentioned therein, but at common law, for the conspiracy, which was considered per se a substantive offence, no act in furtherance of it being alleged, and this after, and notwithstanding the statute.

**Notice is hereby given,**  
That the subscriber has obtained from the orphan court of Anne Arundel county, powers of administration on the personal estate of James Barry, late quartermaster in the service of the United States. All persons having claims against said estate, are requested to present them, properly authenticated, and those indebted are requested to make immediate payment, by order.  
JAMES BARRY, Adm'r.  
July 4.

**Notice to Medical Graduates.**  
At the Annual Convention of the Medical and Chirurgical Faculty of Maryland, held in the City of Baltimore on the first Monday of June, 1822, the undersigned were appointed, a Committee to aid in the prosecution of all Graduates, who practice Medicine in this State, have not obtained a License in the manner directed by the act incorporating the Medical and Chirurgical Faculty of Maryland, and the said Committee were directed "to hold a correspondence with the Censors throughout the state for the completion of this object."  
By the IVth Art. of the act of incorporation, examiners were appointed "whose duty it shall be, to grant licenses to such medical and chirurgical gentlemen, as they either upon a full examination, or upon the production of diplomas from some respectable college, may judge adequate to commence the practice of the Medical and Chirurgical Arts, each person so obtaining a certificate to pay a sum not exceeding ten dollars."  
By a supplement passed in the year 1801, it is enacted "that no person, who is not already a practitioner of medicine and surgery within this state, shall be allowed to practice in either of the said branches, and receive payment for the same, without having first obtained a license agreeably to the original act to which this is a supplement, under the penalty of fifty dollars for each offence, to be recovered in the county court where the offence is committed by presentment and bill of indictment, one half for the use of the faculty, the other for the informer."  
Notice is therefore given to all graduates who have commenced the practice of Medicine and Surgery in the State of Maryland without a License, to make application for the same forthwith, to the Medical Board of Examiners either at Easton or Baltimore.  
It will be the imperative duty of the Committee, in conjunction with the Censors of the Faculty throughout the state, to prosecute all such graduates, as fail to comply with the requisitions contained in the act incorporating the Medical and Chirurgical Faculty of the State of Maryland.  
JOHN D. READEL, M. D.  
P. MACAULAY, M. D.  
JOHN BUCKLER, M. D.  
Committee.  
Baltimore, 29th June, 1822.

**Constable's Sale.**  
By virtue of three writs of fieri facias issued by Nicholas Worthington (of Thom.) Esq. and to me directed, I will offer at Public Sale, at Messrs. Polton and Litchfield's Mills on Elkridge, on Thursday the 13th day of July next, one negro woman named Kate, about 40 years of age, (a slave for life,) late the property of Mrs. Anna Polton; taken at the suits of Doct. Charles G. Worthington, and Messrs. Polton and Litchfield. The aforesaid negro woman will be sold subject to serve Mr. Phillip Rivers, of Elk Ridge, (in whose employ she now is,) one year from about the first of May last year to commence at 11 o'clock Terms of sale cash.  
Thomas Scott, Constable.  
Elk Ridge, 29th June 1822.

**Notice.**  
I do hereby forewarn all persons from taking assignment of a note payable to George Wilkinson, and Co. dated 6th August, 1821, as I have a claim against the same, and am determined not to pay it to any person.  
JAMES HARRISON.  
Lower Marlboro June 28th 1822.

**IN COUNCIL.**  
April 23, 1822.  
Ordered, That the act to alter and change such parts of the constitution and form of government, as relate to the division of Anne Arundel county into election districts, and to change the place of holding elections in the second election district of said county, be published once a week for six weeks in the Maryland Republican, and Maryland Gazette.  
By order,  
NINIAN PINKNEY,  
Clerk of the Council.

**AN ACT**  
To alter and change such parts of the constitution and form of government, as relate to the division of Anne Arundel county into election districts, and to change the place of holding elections in the second election district of said county.  
[Passed Feb. 4, 1822.]  
Sec. 1. Be it enacted, by the General Assembly of Maryland, That all that part of the constitution and form of government which relates to fixing the place of holding the elections in the second election district of Anne Arundel county, be and the same is hereby repealed.  
2. And be it enacted, That the election shall be held in the said election district, at such places as shall hereafter from time to time be provided by law, for the holding thereof.  
3. And be it enacted, That the words "and the electors of the senate of this state" in the third section of the act confirmed at December session eighteen hundred and seventeen, entitled, "An act to alter and change such parts of the constitution and form of government as relate to the division of Anne Arundel county into election districts, and to change the place of holding elections in the second district of said county," be and the same are hereby rendered null, void, and of no effect.  
4. And be it enacted, That if this act shall be confirmed by the General Assembly, after the next election of Delegates, in the first session after such new election, as the constitution and form of government direct, that in such case, this act, and the alterations and amendments of the constitution and form of government therein contained, shall be taken and considered, and shall constitute and be valid, as a part of the said constitution and form of government, any thing in the said constitution and form of government to the contrary notwithstanding.  
July 4.

**Family Flour**  
The subscribers keep, and intend keeping, a regular supply of the  
**Best Family Flour,**  
which they will sell at a very small advance on the Baltimore price, for Cash.  
Adam & Co. Miller.

**Notice.**  
All persons indebted to the late firm of George and John Barber, & Co. are requested to call and settle their accounts, before the 10th Sept. next, otherwise suits will be instituted against them without respect to persons, as it is very necessary that the concern should be settled in as speedy a way as possible, in consequence of my having to settle with the representatives of the late John T. Barber, John Miller Jr.

**NOTICE.**  
The subscriber will expose to public sale, at 6 o'clock P. M. on the 13th day of this month,  
**Several Lots of Ground,**  
situate and fronting on Prince George's street, and running to an alley twenty feet wide, to be laid off at the lower end of said lots.  
The Terms of Sale, one fifth of the purchase money to be paid down, the remaining four fifths to be paid in four equal annual payments, the first payment to be made on 13th July 1822. Bonds, with good security, to be given for the purchase money. Deeds with special warranty, to be given on the payment of all the purchase money, with legal interest from the day of sale. Possession will be given on the 20th December next.  
Jeremiah T. Chase.  
July 4.

**For Sale,**  
The valuable Establishment in the City of Annapolis, late the property of Dr. Upton Scott, and now occupied by Samuel Chase, Esq. consisting of a large & convenient Dwelling House with stable, Carriage House, suitable out buildings, an extensive garden, containing a great variety of fruit of the best kinds, a Green House, all enclosed with a substantial brick wall. Also a lot, containing two acres of ground, situated on the Spa Creek, and convenient to the above Establishment, enclosed with a post and rail fence. The situation is pleasant and healthy, and well calculated to afford an agreeable residence to a large family.  
For terms apply to col. Henry Baylader, Annapolis.  
C. BARKER.