

courts of law or equity," has no reference to adjudications in England anterior to the colonization, or to judicial adoptions here, of any part of the common law, during the continuance of the colonial government, but to the common law in use, as it existed here, either potentially, or practically, and as it prevailed in England at that time, except such portions of it, as are inconsistent with the spirit of that instrument, and the nature of our new political institutions. And surely it cannot be inconsistent with, or repugnant to the spirit and principles of republican institutions, whose strength lies in the virtue and integrity of the citizen, to correct the morals and protect the reputation, rights and property of individuals, by punishing corrupt combinations, falsely to rob another of his reputation, maliciously to ruin him in his business, or fraudulently to cheat him of his property. If it is the law of libel, and for punishing cheats effected by public false tokens, should also be rejected; for the one, is not more inconsistent with the personal liberty of the citizen than the other, or at all more necessary to the preservation of the social order, and they all rest upon the same principle. And that clause in the third section of the Bill of Rights, which declares the inhabitants of Maryland to be entitled to the benefit of such British statutes made since the emigration, as had been introduced, used and practised by the courts of law or equity, and thus virtually inhibits the use of all such as had not been so introduced, furnishes a clear exposition of the whole section, and shows, that it was not the intention of the framers of that instrument, to exclude any part of the common law, merely because it had not been introduced and used in the courts here, and strongly implies, that there were portions of that valuable system, which had not been actually practised upon. And the judicial proceedings of our courts furnish no evidence of any prosecution before the revolution, for a cheat effected by public false tokens; and yet it is not pretended, that from the *non user*, it is not now an indictable offence.

It is not necessary, as has been contended on the part of the defendants in error, that every one should in fact know what the law is, before he can be punished for what the law forbids. Such a doctrine would be fraught with the most mischievous consequences to society; it is enough that the offence was known to the law before, and if it be *malum in se*, there is an inward monitor, always present, to warn, advise and instruct. Nor is it any argument against the law of conspiracy, as contended for on the part of the prosecution, that under the English decisions, the act of conspiring, is not required to be proved by positive testimony, but may be inferred by the jury from all the circumstances of the case. It has nothing to do with the question of what is, or is not an indictable conspiracy; and if it be an objection at all it is one that arises upon the law of evidence, and is equally applicable to every description of conspiracy. But we cannot perceive what there is in it to quarrel with. It is not confined to the offence of conspiracy—Murder, which reaches the life of the offender, and various other crimes, may be proved by circumstantial evidence; and there does not seem to be any thing in the crime of conspiracy, that should exempt it from being proved by the same species of evidence. On the contrary, as conspiracies from their very nature, are usually entered into in secret, and are consequently difficult to be reached by positive testimony, it would appear to be peculiarly necessary and proper to permit them to be inferred from circumstances, otherwise the most dangerous and injurious conspiracies would often go unpunished. I have endeavoured to avoid bringing any thing into this case, which does not strictly belong to it, or assuming any principle that is not well settled. The indictment has two counts, the first charges the defendants with an executed conspiracy, falsely, fraudulently and unlawfully, by wrongful and indirect means, to cheat, defraud and impoverish *The President, Directors and Company of the Bank of the United States*; and the second, charges them with a conspiracy only, falsely, fraudulently and unlawfully, by wrongful and indirect means, to cheat, defraud and impoverish *The President, Directors and Company of the Bank of the United States*. James A. Buchanan, one of the defendants, was the Pre-

sident of the office of discount and deposit of the mother bank, duly established in Baltimore; James W. McCulloh, another of the defendants, was the Cashier of that office, and George Williams, the other defendant, was a director of the mother bank in the city of Philadelphia; and it has been contended, that as an improper use, or embezzlement of the funds of the bank, by either the President or Cashier of the office, would in law be only a breach of trust, a combination to effect the same purpose cannot amount to an indictable offence. But however ingeniously urged, there does not appear to be any thing in the argument, when stripped of the dazzling attire in which it was clothed. Seeing, as has been shown, that to constitute an indictable conspiracy, it is not necessary that the act conspired to be done, should be effected by an individual, be such, as would *per se* amount to an indictable offence. It seems therefore to be perfectly clear, both on principle and authority, that the matter charged in each count in the indictment, constitutes a punishable conspiracy at common law, and that that portion of the common law is in force in this State.

The only question remaining to be examined, that is, whether under the constitution and laws of the United States, the county court of Harford had jurisdiction of the offence, in this particular case; the Bank of the United States, being chartered by an act of Congress, requires but little to be said, and will be disposed of in a few words. A conspiracy to cheat or defraud the bank, is not declared to be an offence against the United States by any act of Congress, and in the case of *The United States vs. Hudson & Goodwin*, 7 Cranch, 32, it was decided by the Supreme Court, that the courts of the United States had no common law jurisdiction in criminal cases. The authority of which case is recognized in the case of *The United States vs. Coolidge* and others, 1 Wheaton, 415, and until it shall be overruled by the same tribunal, the principle must be considered as settled. The matter therefore charged in the indictment is not an offence against the United States, nor cognizable in any of their courts; but a common law offence against the state of Maryland—the act of Congress creating the bank, and the establishment of the office of discount and deposit in the city of Baltimore within the territorial jurisdiction of the state, furnishing only the occasion for the offence, by bringing into existence the thing, upon which the fraud is charged to have been committed. And as the previously vested jurisdiction of the state, cannot be supposed to be taken away, by the mere potential right of Congress (supposing it to exist) to make a conspiracy to cheat the bank, an offence against the United States, and to give exclusive jurisdiction thereof to the United States courts, without any exercise of that right, the original common law jurisdiction of the courts of the state, in relation to this subject, remains as it was before the adoption of the Federal Constitution, and will so continue to remain, until that right shall be exercised by Congress to its exclusion. Whether a concurrent jurisdiction would be denied to the courts of the state, if Congress had in fact vested jurisdiction of this matter in the courts of the United States, it is not now necessary to inquire, the exclusive jurisdiction being in the courts of the state. It will be time enough to examine that question when it shall be regularly presented to us.

It has been urged on the part of the defendants in error, as an objection to the jurisdiction of the courts of the state, in such a case as this, that the principle would be dangerous to the well being of the bank, as it might lead to the passing of laws by the state legislature, calculated to destroy the institution, under pretence of protecting its interests. It may be admitted, that the legislature of the state has no right to pass laws calculated to control or impede the operations of the bank. But it is difficult to imagine, how a general power in the judicial tribunals of the state, to punish an offence against the State, can be considered as an unconstitutional interference with the concerns of the bank of the United States, or as in any manner endangering its security, only because its officers happen to be the objects of the prosecution, and the offence is charged to be, to the prejudice of that institution; which for the purpose of the prosecution is considered as an individual. JUDGMENT REVERSED, and PROCEEDING AWARDED to the County Court of Harford.

MARYLAND GAZETTE.

Annapolis, Thursday, July 18.

ST. JOHN'S & WASHINGTON COLLEGES

Explanation of the Proposal of Alumnus.

It is believed that a misapprehension has taken place respecting the extent of the proposal of the Alumnus, in regard to the students of the University of Maryland, who were invited to attend the Convention at St. John's College. It has been thought, by some, that the invitation extended only to those who had received degrees at the University—but this, we are authorized to say, is entirely erroneous, as it was intended to embrace all those who had been students of either branch of the University on either shore, whether they received degrees or not.

The Editors of those papers who have kindly inserted the proposal of Alumnus, will confer an additional favour by the insertion of this explanation, (and the following address), which will now have time to reach all the students in Maryland, and elsewhere, by the sixth day of December next, to which day it has been agreed to postpone the contemplated Convention.

Address of the Visitors and Governors of St. John's and Washington Colleges to the Alumni of the University of Maryland.

THE Boards of Visitors and Governors of St. John's and Washington Colleges, have derived much pleasure, and high anticipation, from the suggestion of "Alumnus," to his brethren of the University of Maryland, proposing a General Convention at the College at Annapolis, on the first Friday in December next, "to take into consideration the practicability of reviving the University, the plan, and the ways and means to carry it into effect." This proposal appears to them most likely to accomplish the object, and the Boards are equally gratified with the proposition, and pleased with the reflection, that it proceeds from one who has formerly participated in the benefits of the institution. Cherishing, as we do, the most anxious wish for the success of the attempt, we entertain a hope that the additional aid of the government of the institution may prove beneficial, and we cordially unite with "Alumnus," in soliciting the contemplated convention at St. John's College, which shall be opened and prepared for your reception. Notwithstanding the very short period that this University was permitted to dispense its benefits under the fostering hand of the government of the state, the Boards have a peculiar pride in knowing that many of the distinguished men in modern times, who have been marked by their virtues and their attainments, have been her sons! Whilst a great many others of them, not devoted to public employments, are no less celebrated in their respective vocations. Perhaps, indeed, there scarcely ever was an instance, where the governors of any institution could contemplate, with more real satisfaction, the character and condition of the great mass of its students, than those of the University of Maryland; and thence it is we derive our strongest reliance upon the generous exertions of the Convention, and the happy result of their meritorious labours. Sincerely sympathizing with you upon the fallen condition of our Seminary, and deeply mortified at a comparison of the progress of Maryland in liberal, useful, and profound science, with that of most of her sister states, perhaps of all of them, we feel humbled at the reflection, that by the wisdom of our ancestors, Maryland once had an University justly famed for its professors, its laws, its discipline, and its students, and that false and mistaken views of prudence and economy, have induced our political rulers to take from it the necessary means of promoting and extending its usefulness. We mean not to disparage, and we beg not to be understood as making any allusion to institutions that may have grown up since the first establishment of the University of Maryland—that is not our aim—we rejoice that such institutions have been auxiliary to the great cause of youthful instruction. We speak alone of a great State University—one deriving its birth, its sustenance, and its protection, from the authority and patronage of the state, founded upon the inflexible principle that free governments can alone exist among an enlightened people, and held up as evidence of the conviction, that there is no greater political solecism, than that public liberty and ignorance can long be co-

habitants of the same community. We hold it as a truth, and a maxim, never to be departed from, that all states should first look to their own population for the men who are to regulate and direct their own concerns, and ought therefore to provide, and amply to endow, extensive seminaries of learning for the instruction of their youth in the rudiments of all the sciences, to prepare them advantageously to enter upon the studies of their intended professions and pursuits. Nor is it an argument against this maxim if a few signal instances of exotics, transplanted into our soil, have grown up kindly with our population, and have afforded us good fruit; we bid them a hearty welcome, and sincerely thank them for all the services they have rendered us; we will, if they please, retain them as our own; but we cannot consider it wise to trust alone to future migrations. If there has been any thing in latter times for which the states that form this grand confederacy have more particularly distinguished themselves generally, it has been for their providence in the improvement of institutions for liberal education. In most of them we see abundant funds set apart for the ample endowment of seminaries; in all we find, in every executive communication to their legislative bodies, the subject of liberal education reiterated and enforced with most becoming zeal. Where then our listlessness to this great concern? Has Maryland experienced no advantages, has she acquired no glory, from the character and labours of her illustrious men, that she is dead to the call of fame, because she has experienced none? Let the faithful history of the state answer the interrogatory with proud and pre-emptory denial. Has she no high minded ambition to preserve and to perpetuate the celebrity which has been shed over her by her senators, her bar, and the enlightened and refined state of her society generally? Though unexerted, we must believe she has, when we view her means, her ability, and her inducements. We must believe that the cause of this seeming indifference upon the subject of a State Seminary, is owing to a proper appeal not having been made to the inhabitants; and it is left to the generous exertions of the Alumni of the University, to make this appeal, and to sustain it with an ardour commensurate with the object. Interested in your cause, and desirous to sustain any part in it, that may conduce to the great end, we most anxiously hope, that the call of the Convention will be regarded by you all as a happy incident, and that all will cheerfully unite to devote to it their best exertions. You constitute a body of citizens in this state distinguished for talent, reputation, wealth and personal influence, that deservedly ought and must give you power to accomplish much, if you will cordially unite, and steadily pursue your purpose. The very example of such men cannot but conciliate the favour and approbation of every enlightened citizen, whilst your vigorous efforts must command an extended co-operation. No time could be better adapted to the effort—no proposition more likely to obtain success. Living examples, yourselves, of the efficacy of the institution you wish to resuscitate, possessing no personal interest that does not equally belong to every citizen of the state, you have the fairest claim to the public attention, and the experience and feelings of no men could stimulate to greater exertion. If the highest approbation, and devoutest wishes of the Visitors and Governors, can add any excitement to your pursuit, they attend you. You possess our entire confidence, and merit our peculiar favour. The stations we have held in the government of the University, we accepted to promote the interest of the Seminary, and the public good—These stations we are willing to retain, or to surrender, as may be most conducive to the welfare of both. If the revival of this once useful Seminary we desire—it is the diffusion of wholesome moral and scientific attainments among our rising youth, we aim at—it is the honour, the welfare, and the good fame of the state, that we are anxious to promote. That we may have partialities for this institution, we disdain either to deny or to conceal; if they exist, they are the very fruit of virtue, for they are partialities growing out of the experience of the great advantages once derived to the state from its ancient University, and from a knowledge of the many distinguished characters who have been there educated. It is impossible for us to separate the pros-

erty of this state, and its people, from the re-establishment of such a University, and as citizens and as the most devoutly desiring of our aid, there is something affecting, impressive in the idea of the Alumni of our flourishing Seminary, gathering around its ruins, and endeavouring to reconsecrate the fallen edifice. It is the spectacle of filial affection in the performance of the tenderest office—it is gratitude engaged in its most glorious duty—it is the highest and exalted wisdom. If the reputation of our native state has been for some years past under the eclipse, of which we now promise to dawn upon us, will not only be brilliant and glorious in itself, but will receive additional splendour from the contrast of Past regret and humiliation, will be supplanted by joy and hope, when Maryland shall witness such a body of her sons in Convention, to undertake the noble work of restoring her University to its ancient splendour and usefulness. It is for you, Alumnus, to revive the fallen greatness of an institution, where the revered names of Smith, McDaniel and Ferguson, will animate your exertions. As the day of your proposed convention approaches, the hopes and the prospects of Maryland brighten. Whatever of the population are capable of estimating the event, are filled with anxiety of the occasion. It is the last, and the only plausible effort that probably will be made, or that can be made. It is, therefore, with no enthusiasm we speak, but in sober earnestness, when we say, that the fate and the fame of Maryland rest upon you.

If your united exertions, under the benign influence of a protecting Providence, shall work out our deliverance, and give new life and vigour to our University, the gratitude and applause of the present generation will be your rich reward, and you will live in after ages as the preservers of our republic—the protectors of the people's welfare—the defenders of their rights—the guardians of their happiness—the children's best friends—the noblest examples of your times.

WILLIAM H. MARRIOTT, President of the Board of Visitors and Governors of St. John's College.

THOMAS WORRELL, President of the Board of Visitors and Governors of Washington College.

*This language is literally applicable to the institution in its character of a University, which, since the deprivation of its funds, has had no actual existence as such, though the Visitors are proud to say, that their individual labours, aided by an able body of Professors, have maintained for the College separately a most honourable rank.

COURT OF APPEALS.

Wednesday, July 10.

CHASE, C. J. delivered the opinion of the court affirming the judgment of Baltimore county court, in *Stewart vs. Donnell's Lessee*, argued by Winder and Johnson for the appellant, and Dorsey, (Attorney General), for the appellee.

BUCHANAN, J. delivered the opinion of the court, affirming the judgment of Harford county court, in *Hughes vs. Stiles*, argued by Keas, for the appellant, and Taylor, Winder and Bullitt, for the appellee. Proceeding awarded to Montgomery county court.

EARLE, J. delivered the opinion of the court, reversing the judgment of Saint Mary's county court, in *Fenwick vs. Forrest*, argued by Winder for the appellant, and Magruder for the appellee.

EARLE, J. delivered the opinion of the court, reversing the judgment of Charles county court, in *Law vs. Scott*, argued by Harper and Magruder for the appellants, and Tanny, Winder and Bullitt, for the appellee. Proceeding awarded to Montgomery county court.

EARLE, J. delivered the opinion of the court affirming the judgment of Baltimore county court, in *W. & C. Merryman vs. The State*, at the instance of Harris, and for the use of Murray, argued by Williams for the appellants, and Johnson for the appellee.

BUCHANAN, J. delivered the opinion of the court, reversing the decree of the Chancellor, in *Berry & others vs. Kent, adm'r of Johnson*, argued by Tanny for the appellants, and Dorsey, (Attorney General), and Magruder, for the appellee.

The court reversed the decree of the Chancellor in *Cox's Ex'rs. vs. Scott*, argued at December term 1819, by Scott for the appellants, and Moore for the appellee.

The court affirmed the decrees of the Chancellor in *Browning vs. Lally*, argued by Pignon for the appellant. No costs appeared for the appellee.

The court reversed the decree of the Chancellor in *Warfield & others*, argued at June term last by Harper and Tanny for the appellants, and Pinkney and Magruder for the appellees.

The argument in *Patterson vs. The Baltimore Insurance Company*, was concluded by Harper for the appellant, in reply.

Thursday, July 11.

The case of *Kennedy*, provisional trustee of Abbott, vs. Boggs, was argued by Meyer for the appellant, and Williams for the appellee.

The court also affirmed the judgment of Baltimore county court, in *Garrison vs. Bond*, argued by Raymond for the appellant, and Johnson for the appellee.

The argument in *Kennedy vs. Boggs*, was concluded by Kennedy and Murray, in reply.

Saturday, July 12.

BUCHANAN, J. delivered the opinion of the court, reversing the judgment of Baltimore county court, sitting as a court of equity, in *Daniell and others, vs. The Attorney General at the relation of The Vestry of St. Peter's Church*, and others, argued by Winder, Tanny and Murray, for the appellants, and Harper and Johnson for the appellees.

The case of *Daniell and others, vs. The Attorney General at the relation of The Trustees of Hillborough School in Carolina county*, was continued until curia adiacere until June term next.

EARLE, J. delivered the opinion of the court, affirming the judgment of Baltimore county court, in *Kennedy vs. Boggs*, argued by Meyer, Kennedy and Murray, for the appellants, and Williams for the appellee.

The court affirmed the judgments of Baltimore county court, in *Patterson vs. The Baltimore Insurance Company*, and *Patterson vs. The Baltimore Insurance Company*, argued by Tanny and Harper for the appellants, and Williams for the appellee.

The case of *The State, vs. Rogers, et al.*, was argued by Williams for the appellant, and Johnson for the appellee; and the case continued under curia adiacere until June term next.

The case of *The Palatoc Insurance Company vs. Smith & others*, argued by Winder and Mayer for the appellants, and Raymond for the appellee.

Mayer moved to enlarge the term of the demise, in an action of ejectment which had been brought in the late General Court by *Frazier's Lessee vs. Hall*, and in which judgment was given for the plaintiff at May term 1790. The subject of the motion was to enable the plaintiff to revive the judgment by writ of error. It was overruled by the court, on the ground that the plaintiff had suffered too long a time to elapse since obtaining the judgment, before he took any step to carry it into execution.

The Court then adjourned until the time appointed by law for its next session.

COMMUNICATED.

AMERICAN INDEPENDENCE.

Fourth of July.

Agreeably to previous notice and arrangement, a large portion of the citizens of Annapolis, together with some citizens of this and Prince George's counties, and the Honorable Gabriel Duval, one of the Judges of the Supreme Court of the United States, Messrs. Buchanan, Earle, Martin and Stephen Judges of the Court of Appeals, the Clerk, and a part of the Bar of Maryland, assembled at the Garden of Col. Lewis Duval, where preparation had been made for the purpose of celebrating the 46th anniversary of American Independence. The company having assembled, the Honourable Reverend Johnson, a native of this city, a statesman, and one of the Bar of Maryland, by request, read the Declaration of Independence. The dinner being ready, was announced by the discharge of a cannon. The company then sat down to a comfortable dinner. Judge Duval presided, assisted by Judges Buchanan and Earle, when the following toasts were drunk by the company, with that zeal and enthusiasm that becomes the American republican citizen.

- 1. The Day, of all others the most politically important to the beloved country.
 - 2. The memory of Washington, the father of our country.
 - 3. The memory of our heroes who gloriously fell in the sacred cause of Freedom and Independence.
 - 4. The Congress of 1776.
 - 5. John Adams, Thomas Jefferson, and Charles Carroll, of Carrollton, the only members of those who signed the Declaration of Independence.
 - 6. The President of the United States.
 - 7. The thirteen old United States, with their additions, the new States.
 - 8. The Agriculturalists of our country.
 - 9. Manufacturers and Manufacturers.
 - 10. Mechanics—Success to their Trades.
 - 11. The Army and Navy.
 - 12. The Militia of each and every State, whenever called on may they excel, if possible, the zeal and bravery at Orleans in 1815.
 - 13. James Madison—Great in state, content in retirement.
 - 14. The memory of the departed defenders of our Independence in the late war with England.
 - 15. Capt. Isaac Hull, who gave the first positive proof that a British frigate was easily conquered by a American frigate.
 - 16. The State of Maryland.
 - 17. The Constituted Authorities.
 - 18. The Constitution of Maryland—May our law makers be always cautious in alterations, keeping separate and distinct the Legislative, Executive and Judiciary.
 - 19. The Constitution of the United States.
 - 20. Peace with all the World on honourable terms.
 - 21. Hopsun, the ingredients always good.
 - 22. Patience in hard times, honestly trying to obtain better.
 - 23. The Citizens of the United States, natives and adopted.
 - 24. The Fair Sex—Virtuous as fair.
- After the gentlemen who presided, retired, the following volleys of toasts were drank:
- By Rezin D. Baldwin. The President of the day, Judge Gabriel Duval, an old inhabitant of Maryland, and sterling republican of known value.
 - By James Ighehart, jr. Judges Buchanan and Earle, the Vice-Presidents of the day.
 - By J. H. Slemaker. Our absent friends—and may this day always remind us, that politically and religiously it set us free.
 - Col. Duval being called on gave the following: Honour and all judged endeavours for the public good they be crowned with success.
 - By Mr. Grason. The Brewers of Miss counties—May their machinations always prove successful.
 - By Thomas Jefferson Gassaway. The thirteen stars, may they ever wave triumphant, and may every invader of our land gain nothing but a grave.
 - The day was spent with great harmony, each appearing to feel, and rightly estimate the importance of the day. Many appropriate and patriotic songs were sung—and no city ever the company retired.