

Case No. 16,364. UNITED STATES V. SPALDING ET AL.
[4 Cranch, C. C. 616.]¹

Circuit Court, District of Columbia.

Nov. Term, 1835.

CONSPIRACY—SELLING FREE NEGRO.

The court will not quash an indictment for a conspiracy to cheat by selling a free negro as a slave.

Indictment for a conspiracy to cheat one Washington Roby by selling him a free negro as a slave for life. The first count charged that the defendants [Richard Spalding and Ellen Dwyer] conspired to cheat him by selling to him a certain negro boy as a slave for life, (and as the property of the said Ellen,) whom they then and there offered to sell to the said Roby, and who was then and there a free boy; and who was not their property; they, the said Richard and Ellen, then and there well knowing that the said boy was free, and was not their property; and that in pursuance of and according to their said confederacy, they fraudulently attempted and offered to sell, to the said Roby, the said boy, as a slave for life, and as the property of the said Ellen, well knowing that the said boy was not a slave, and was not their property, to the great damage of the said Roby, and against the form of the statute, &c. The second count charged that the defendants conspired “to sell a free boy” under the false and fraudulent pretence that he was the slave of the said Ellen, and thereby falsely and dishonestly to obtain money by cheating and defrauding the person or persons to whom they might so sell the said boy; and in pursuance of the said conspiracy “did attempt and offer to sell the said boy as a slave and as the property of the said Ellen to divers persons, namely, to W. R., G. G., and J. D.; the said defendants well knowing that the said boy was not a slave and was not the property of the said Ellen, to the great damage, &c. and against the form of the statute, &c.

W. L. Brent, for defendants, moved the court to quash the indictment because the conspiracy charged was not to do an act indictable at common law; cheating by a simple false assertion not being indictable. He cited 2 Russ. Crimes, 293, 297, 697; 4 Starkie, 403; and Chitty, 904.

But THE COURT (THRUSTON, Circuit Judge, doubting,) refused to quash the indictment

The cause was afterwards tried, and defendants were acquitted.

¹ [Reported by Hon. William Cranch, Chief Judge.]