in that case they jury are to give to the acts & declarations of Ann Mitton, which had been admitted as evidence to the jury, no weight & are not to be influenced by them.

What facts amount to such an agreement between the prisoner & Ann Mitton to aid & assist each other in effecting the murder of the deceased as to make her acts & declarations in furtherance of this common purpose is a question of law, & the decision in the court below may be reversed in this court. So, what evidence the judge should allow to be offered to him, to establish these facts is a question of law. So whether there be any evidence tending to show the existence of such an agreement, is a question of law. But whether the evidence if true, proves these facts & whether the witnesses giving testimony to the court touching the facts are entitled to credit or not; & in case of a conflict of testimony, which witness should be believed by the court are questions of fact to be decided by the judge & his ~~of~~ decision cannot be reversed in this court. See State vs George 7 Ind 321. & State vs Andrew at this term, where the subject is fully explained. The remarks made

evidence against him