(1)

State of Dela -

The case, as it now comes up, presents but few points, & no one of them calls for much discussion.

1st On the argument, the point made upon the evidence offered to the court, as preliminary, to the admissibility of the acts, & declarations of Ann Melton, in evidence to the jury against the prisoner; was treated, as if the question before this court, was, in regard to the sufficiency of the evidence to establish the fact of an agreement between Ann Melton & the prisoner to compass the death of Lawrence Foster; whereas this court is confined to the question, was there any evidence tending to establish that fact? If so, his honors decision as to its ~~[illegible]~~ sufficiency was a question of fact, which we cannot review; looking at it in this point of view it must be conceded that the point is against the prisoner -

2d "His honor erred in receiving as evidence to himself - The declarations of Ann Melton to wit, the message & instructions given by her to