The Prussian Forgery Case.

THE PEOPLE OF THE STATE OF NEW-YORK

vs.

THEODORE PEITMANN, ANTOINE GARVACCI,
AND OTHERS.

OPINION AND DECISION

OF

JUSTICE STUART.

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THE Consul General of the Prussian Government for the United States preferred a complaint before me, on oath, alleging that at the City of New York, on the 1st day of July, 1852, THEODORE PEITMAN, ANTOINE GARVACCI, and others, did feloniously make, and procure to be made, certain copper plates in imitation of genuine Prussian loan office bill plates, and had forged, by taking impressions from those false plates, a large number of loan office bills of the denomination of one thaler each, being in strict similitude of the genuine Prussian bills, and with having them in their possession in this city for purposes of fraud.

Counsel on the one side and on the other side agreed to assume, with a view first to determine the law of the case, that all the matters and things alleged by the complainant were facts in the premises; and it was submitted to me upon able arguments on both sides whether these loan office bills are indeed the subject of forgery under the laws of this State. I have given the matters presented much consideration, and will determine the questions of law involved to the best of my ability, aware, as indeed I am, that the case embraces many important legal principles and questions touching the offence of forgery. It is in proof, by an established copy of the laws of Prussia, that in 1848 an act was passed by that government for the creation of public loan offices, and the issue of loan office bills. Among the provisions of this law the following are those that enter into the consideration of the subject before me:—

"Sec. 1. In Berlin, and in the places where branches of the Prussian Bank exist, loan offices shall, if required, be opened under the guarantee of the State, for granting on security loans for the promotion of commerce and industry. For the effecting of such loans and establishment of depots, agencies may be established by the loan offices, also, in such places where branches of the Prussian Bank do not exist.

"Sec. 2. For the total amount of the loans granted paper money is to be issued under the name of "Darlehns-Kassenscheine" (loan office bills).

These bills take the place of specie in payments. All public receiving offices shall take them at their full nominal value: no private persons are obliged to receive them. No bill is to be issued without sufficient security having been given according to section four. The total amount of the loan office bills issued shall not exceed ten millions thalers.

"Sec. 4. As security may be taken and bills issued on the pledging of merchandise, agricultural and mineral produce, and manufactured goods stored within the country to one-half, in excepted cases to two-thirds, of their valuation, according to the different articles, and their saleable qualities and on the pledging of inland government stock, or stock issued under the permission of government by bodies politic and associations: provided their nominal value has been paid in full, and the regular payment of interest or dividends thereon has commenced; after deduction of the current or market discount. The loan shall in no case exceed the nominal value; stock not issued to the holder must be assigned over to the loan office.

"Sec. 9. The formalities provided in articles 2,074, 2,075 and 2,078 of the Rheinish Civil Code, are not to be observed by the loan offices; the entry of the loan upon the books of the loan office has the legal effect of a public document.

"Sec. 11. The loan offices are independent offices, with all the rights and powers of bodies corporate; they enjoy all the rights of the public treasury, with the exception of the privileges granted to the latter in bankruptcy and priority cases.

"Sec. 12. The Prussian Bank undertakes the management of the loan offices for account of the State and under the direction of the Ministry of Finances, but strictly separate from its other business. The general administration is conducted at Berlin by a separate bank department, under the name of "General Administration of the Loan-Offices;" besides this, for and by each loan office a proper president is to be elected, for which presidency merchants and mechanics are eligible. The interest of the State is represented in each loan office by a government agent, to be named in each case by the Minister of Finance.

"Sec. 14. Two members of the directory being merchants or mechanics, shall every week, changing weekly, attend to all the business transactions of the loan office, and shall see, that loans are given exclusively for the purpose of furthering commerce and industry, and that within these limits all interests are so far as possible provided for in an equal manner; if, in their opinion, this is not the case, the loan must be refused.

"Sec. 15.—The government agent shall take notice of all the business transactions, and shall have the right of refusing the making of the loan in all cases where one is asked.

"Sec. 17. The ten millions of thalers in loan office bills, shall consist of six millions in one thaler bills, and four millions in five thaler bills. The loan office bills are made by the general administration of the loan offices, and are to be stamped by the committee created by our own order, dated July 16, 1846, (Laws, page 264.), for the control of the issue of bank notes, to prevent no more than the amount allowed by law being issued; and then transmitted to the different loan offices in proportion to the amount needed. The Minister of Finances has to make known monthly the amount of loan office bills in circulation.

"Sec. 18. As soon as the continuation of a loan office is no more required, the Minister of Finance has to decree its discontinuance, and to make the same known publicly. All the loan office bills shall be called in within three years at least, and a preclusive term of not less than six months shall be fixed therefor."

These loan office bills, upon the one side, represent as follows:—

"Loan office bills; law of April 15th, 1848; one thaler currency, after the standard of 1764; Berlin; "general administration of the loan offices;" and on the other side, "Loan office bill, one thaler currency;" with the number of the bill and the name of the president of some one of the branches of the Prussian Bank, purporting to be his signature, as also the names of the officers of the "bank department" charged with the general administration of the business of the loan offices; they bear a vignette, with such other designs as are common to bank notes of this country, and each genuine bill is stamped.

Counsel for the prosecution, when this case was first brought before me, presented it as within the 36th section, article 3, chap. 1, part iv, 2d vol. R. S., 2d edition; which provides that "Every person who shall have in his possession any forged, altered, or counterfeit negotiable note, bill, draft, or other evidence of debt, issued, or purporting to have been issued, by any corporation or company, duly authorized for that purpose by the laws of the United States, or of this State, or of any other State, government or country, the forgery of which is herein, before declared to be punishable, knowing the same to be forged, altered, or counterfeited, with intention to utter the same as true, or as false, or cause the same to be so uttered, with intent to injure or defraud, shall, upon conviction, be subject to the punishment herein prescribed for forgery in the second degree." It was contended that

these instruments were the issue of a corporate institution; that they were, in the language of the Prussian act, the issue of loan offices, "having all the rights and powers of bodies corporate," and for all the purposes of forgery were clearly within the provisions of the statute of our State just read; that being bills issued by a corporation duly authorized for that purpose by the laws of another country, they were the subject of forgery not only, but that the prisoners were liable for a felony, under this section. To this the first answer of the defendants was—"Admitting that they are the issue of a corporate institution created by the laws of a foreign country; they are, therefore, not the subject of forgery under the laws of New York, and for the reason, that they are of a denomination less than one dollar, (about 70 cents,) the circulation of which, in this State, is not only inhibited by law, butit is made a penal offence. Sec. 8, chap. 20, part 1st, R. S., 1st vol., page 708, 2d edition, provides that "no person shall pay, give, or receive in payment, or in any way circulate any bank bill or promissory note, check, draft or other evidence of debt, issued by any banking company within this State, or elsewhere, which shall purport to be for the payment of a less sum than one dollar."

I am of opinion that the inhibition by this section was intended to guard against the circulation in this State of the issue of any of the banks, or of any banking company, of any other State or territory, where the currency standard of the United States controls, and where the standard of hundred cents to the dollar obtains as the fixed United States legal currency of the country, and not against the use of notes and bills of foreign incorporate institutions, issued under foreign laws, and upon a different standard of currency; and this view is countenanced by the eighteenth section of the same title, where the section last referred to is declared to apply to all notes or bills that purport to be issued by private bankers or private individuals carrying on banking business in any state or country, omitting to include and thereby excepting the notes and bills of public institutions incorporated by the laws of a foreign power, where the standard of public currency is at variance with the uniform lawful standard in all the several States of this government. That I may be wrong in the construction of this statute is possible, perhaps probable; and to secure the prisoners against injury from error, (in this particular, at least,) I am willing to regard these Prussian notes as within the meaning of this prohibitory law, and their circulation in this State as illegal; and, under this view, will consider the point raised by counsel, that, therefore, they are not the subject of forgery.

The case of Wilson, sixth of Johnson, was cited as conclusive upon this point. Wilson was indicted for having in his possession, with intent to utter for fraud in this State, a bank note issued by the bank of Vermont, of the denomination of seventy-five cents, American currency. The court held, that because of this prohibitory section, no one in this State could, in contemplation of law, be defrauded, as all were bound to know that it was illegal to receive any such note in this State, and, therefore, it was no crime for the prisoner to have it, with intent to pass it in New York. Nothing is more certain than that where it is legally impossible to consummate a wrong, it is equally impossible to intend one, and for the reason that the means, (except conspiracy,) designed to violate a statute, which can not be by them offended, however wickedly perpetrated, are not criminal. The court in this very case say, however, that they do not mean to determine that this note would not be the subject of larceny, nor that, if the prisoner had been indicted for having it in his possession, in this State, with intent to defraud the Bank of Vermont, he might not have been properly convicted. It was expressly held in the case of R. *vs.* Maragood, Ross, and R., 291; and the same doctrine may be found in a number of English cases, that a jury is bound to find on an indictment for having a forged instrument in hand with intent to utter, that the design was to defraud the person who would have to pay it if genuine; indeed, there has never been any doubt that this principle is as well settled in law, as it is legitimate of reason, save what little ground for cavil may be found in the indefinite language of the court. Incidental to the main question in the Vermont case, counsel for the defence submit that if the accused did fabricate similitudes of these Prussian notes, it was done with an intent, both in fact and by legal presumption, to utter and pass them within the jurisdiction of New York, and that, being the bills of a banking company, and of a denomination of less than one dollar, no felony had been committed; whatever may have been in fact the intent of the prisoners in making these false securities. I can only look after their design through the eye of the law, and for the reason that they could not practice fraud upon the citizens of New York, I am legally precluded from the supposition that they intended any. If correct in this, it is an equal legal certainty that these instruments, having their inception in fraud, and being (as they certainly are) in strict similitude of valid notes, they were made to utter wherever they would work a cheat: and as they are the counterfeits of instruments having a legitimate existence under the laws of Prussia (sec. 17th, P. L.) of an absolute fixed value (sec. 2d, P. L.) operating as

a currency between the government and the people of that empire (sec. 2d, P. L.), I am bound to infer, that they were made to cheat the king and citizens of that country. *If they were made in fraud, they were intended to operate for fraud wherever fraud could be by them effected.*

The fabrication of a bank note in New York which, if genuine, would have no legal existence anywhere, but would be utterly void and inoperative everywhere, is indeed no forgery; and this is all that the case of the King *vs.* Moffat, referred to in 6th Johnson, and adduced by the defence to prove these notes no forgeries, decides: —

Moffat forged a bill of exchange, which, if it had been true would have been invalid under a special statute then existing in England, and the Judges decided that it was no forgery, for the reason that, if it had been genuine, it would have been worthless everywhere. Not so with the Vermont Bank bill; that, if true, would have been illegal only in New York, and being false, to pass it in this State would be no felony; but this by no means determines that to have made it here, *with an intent to pass it in Vermont*, would not be a forgery within our statute. The Court in pronouncing their decision are particular to declare against any such an understanding of their opinion.—If this were so, counterfeit money could be made in this State upon the banks of other States, whose local currency is less than one hundred cents to the dollar, with intent to utter it there, with perfect impunity. This is not the spirit, nor indeed the letter of the criminal law of New York against forgery.

But a more important question than this was raised by Mr. Graham on the argument of this case for the prosecution. "Are these loan bills in fact negotiable notes, bills, drafts, or other evidences of debt, issued by a corporation or company duly authorized for that purpose by the laws of another country, within the meaning of the 36th section, first recited; and if not, are they securities, the false making of which, even with intent to cheat, is in violation of any other of the statute provisions against forgery: and if so, whether they are not embraced by the more comprehensive term of "Instruments", in the following 37th section of the same title, as defined by the second subdivision of the preceding 33d section; which, if it be so, would leave the question raised upon the prohibitory law with respect to the circulation of Bank notes of a less denomination than one Dollar, entirely out of consideration? "Every person who shall have in his possession any forged or counterfeited instrument, the forging of which is hereinbefore declared to be punishable (except such as are enumerated in the last section), knowing the same to be forged, counterfeited, or falsely altered, with intention to injure or defraud

by uttering the same as true, or as false, or by causing the same to be so uttered, shall be subject to the punishment herein provided for forgery in the fourth degree." And the subdivision of the 33d section declares the subjects of forgery comprehended by the section last repeated to be: "Any *instrument* or writing, being, or pretending to be, the act of another, by which any pecuniary demand or obligation shall be, or purport to be, transferred, conveyed, discharged, diminished, or in any manner affected."

The first inquiry necessarily is: Are these loan offices, incorporated by the laws of the Prussian government? The act declares them invested "with all the rights and powers of bodies corporate," and that they "enjoy all the rights of the Public Treasury," and in sec. 12, "That their general administration shall be conducted at Berlin by a separate Bank department under the name of the General Administration of the Loan Offices." It appears to me, that the rights and powers thus conferred, are so limited by the provisions and general spirit of the entire law, and the character and powers of these loan offices so strictly defined and circumscribed, as that they are deficient in nearly all the elements and incidents necessary to constitute such a company or corporation, as the legislature of our State contemplated in the enactment of the section referred to. They are without by-laws or rules of action, (except indeed the law by which they were created,) and have no power to make them; without officers of their own or power to elect them; but are governed by the officers of State and, as agent for the Government, by the Prussian Bank, which is itself, and not they, an incorporate institution. They are without perpetuity, but their duration depends upon the necessity that brought them into existence. They partake of almost none of the elements necessary to a corporation, nor scarcely any of the incidents required by such an incorporate company as was meant by the Legislature of our State. These notes are not in my judgment the issue of any corporation or company, created by the laws of another country within the meaning of the act read; unless indeed it be argued, that the Prussian government is a corporation. A government is a body politic; instituted indeed with certain absolute powers and independent rights and capacities, things necessary to the charter of a corporation, and the chiefest element of a corporate body; but no pretence was made to this view, as in fact there is no ground to regard the government of any state or country as within this section of our statute. These bills are issued by the *Prussian government itself*, and in no wise by a "Corporation" or "Company" duly authorized for that purpose by the

laws of Prussia. A careful reading of the entire Prussian act must, in my judgment, determine every mind in the opinion that the distinction I have made clearly exists in fact. They are the immediate creation of the Prussian government, the direct issue of its provisions, guaranteed under its own hand, a currency in lieu of silver between it and the people by virtue of its own ordinance; means instituted by itself to aid commerce, and promote industry, bills carrying to the citizen a loan of its credit, upon security pledged; instruments brought into existence by itself, through a law declaring what was its objects and ends in their creation. —And now, with this view, is the counterfeiting of these Prussian government securities still an offence at law?

The crime of forgery is an independent common law offence, a misdemeanor indeed, and the statutes, both of England and of this State, have done nothing more than simply to declare it a felony, define it into degrees, and affix penalties, save that a few peculiar instruments are included, which were not before embraced by the common law definition. The fraudulent making or counterfeiting of any instrument, whereby the rights of the person or property of another may be injured, or in any manner affected, is a standard common law definition of this crime, and which is precisely the definition of our statute, as declared by the 32d section, and the 2d subdivision of the 33d section already recited, and which is intended in the language of the revisers, to embrace every act of forgery that ever has been or ever can be perpetrated—to include every instrument and every writing ever known to the common law, or legislated upon by the British Parliament. The inquiry still is, are these loan office bills Instruments, as defined by the language of the legislature, just repeated, and within the meaning of the thirty-seventh section, which declares that "every person who shall have in his possession any forged or counterfeit instruments, knowing the same to be forged with intent to utter, or cause the same to be uttered as true, shall be guilty of forgery," &c.? It is not denied, (treating the Prussian law as evidence in the premises,) that these bills are not only issued under the sanction, but upon the guarantee of the government, and under the supervision of one of the highest departments of State (Ministry of Finance), for a valuable consideration (sec. 1, 2, 12); that they create and convey the obligations of the government to receive them in discharge of debt due the public authorities (sec. 2); and more than all that they take the place of specie in payments (sec. 2), with all the nominal, if not the real value, of the precious metal itself. Is not, then, the government liable, in contemplation of law at least, to be injured by the fabrication

of these instruments (which in some respects are not unlike the treasury notes of our government); and may not any person, any of the citizens of that country—for the term "any person," in our statute, means not only any person of this State and this country, but any person of any state, and of any country, any person or all persons here and everywhere—be in some manner affected in their property by the circulation of these counterfeits? But to make a closer application of the inquiry: A citizen of New York is indebted to some one of the public departments of the Prussian government, (the department of customs,) in the sum of ten thousand thalers, and he in this city purchases, of these defendants, as genuine, ten thousand of these forged government guaranteed loan securities, with which to discharge the obligation, and which he might do with the same propriety as would be the purchase of United States treasury notes, for the payment of a debt due this government for duties imposed, (for if they are not the issue of a corporation their circulation is not prohibited, even though of a less denomination than one dollar each,) would he not be defrauded even here, within the State of New York?

The Prussian Consul, shortly before he preferred this complaint, purchased in this city a number of (genuine) loan bills to forward to his government in lieu of gold, for the discharge of an obligation, and Wall-street brokers and private bankers buy and sell them precisely as other foreign bills, bonds, notes or other transatlantic public securities whatsoever. There is almost no doubt in my mind that they are "instruments," fairly within the meaning of that term as used in the 37th section before recited. The objection that they are the notes of a foreign prince or government, and therefore cannot be counterfeited in this State, is answered by the case of the King *vs.* Bolls, 1 Mood. cc. 470: where it is expressly declared to be a forgery to counterfeit the notes of a foreign prince; besides, in 11 Geo. IV. and 1 Will. IV. c. 66, p. 19, *which are covered by our statute*, the English Parliament declared penalties against the forgery of the notes of a government foreign to its own. In the year 1836 the grand jury of this city indicted by presenting them in a Bill, consisting of over fifty counts, two men, named Paulo J. Figueira and Fortunato Figueira, who were never tried (not because they were offenders of means, character and importance, certainly) for having falsely made, &c., a certain plate in the similitude of a promissory note; and with having taken certain impressions therefrom, which were in the similitude of promissory notes, purporting to have been issued under the laws of a foreign government, viz., the

government of Brazil, in the words following: *No. Rs.* 50$000—*Empire of Brazil: This note will be received as money in the public departments of this province of Lao Pedro, for the value fifty Mil. Rs.: Law of the* 3d *of October*, 1833," with intent to defraud the *government* of Brazil. It will be seen that these Brazilian notes were in part of the same character of these Prussian notes, and purported to have been issued under the laws of a foreign government. I have referred to this indictment only for the consideration that three learned Counsel of this City, all at that time distinguished, I believe, for their knowledge of criminal law, Hugh Maxwell, John Anthon, and J. Phillips Phoenix, who as attorneys for the people, preferred the complaint to the grand inquest and prepared the Bill of Indictment, regarded notes of this kind as the subject of forgery, having given the question, it is to be presumed, (the case being an important one) all proper attention.

But the defenceof this complaint say that (all other questions aside) these Prussian loan bills create no liability, nor express any consideration on their face, and are void in law; that they do not convey, confer, or affect any rights, property, or interests whatsoever; therefore a false making of them is no forgery; and this is urged upon the well settled ground, that where a false instrument, if true, would be void, no offence is committed in creating it, however mischievous the intent. I have considered this (to me the most embarrassing feature of this case) with much attention. It is obviously true, that these notes *on their face* create no liability, express no consideration, and do not purport to affect any interest, right, property, or person, and it is equally true, that to counterfeit the similitude of an instrument which is absolutely void and without any legal validity whatever, is not a forgery. But in this consideration there is, in my judgment, a very important distinction to be carefully observed, and the proposition so forcibly argued by defendants' counsel is true only as respects the forgery of such writings as, if void, are so from some legal defect or error in their creation, to correct or supply which, is necessary to constitute a perfect instrument; but is not true when applied to an instrument which is in itself perfect, and is a complete creation of the law, being void upon its face only for want of evidence to witness its legal character, and express its validity. The objection does not, I think, apply to an instrument which is perfect in law, but which, because of its character, is compelled to rely upon foreign matter and extrinsic facts, to explain what its signification is, and to discover its legal operation and effect with reference to persons or property. Any false writing which, if true, would be absolutely illegal in its very

nature, frame-work, and construction, cannot be a forgery, however wicked the purpose of the maker; and for the reason, that every person is presumed to know the law, and to know that the instrument, whether true or false, is worthless, and therefore no one can be deceived or wronged by it. That forgery cannot be predicated in respect to such writings, there is no doubt. Any instrument which when perfect is upon its face capable of working its own definite end, without extrinisic aid, but which is void because of any deficiency or error of substance in its creation, is not the subject of forgery, as in contemplation of law it cannot injure, or affect any one; but must this be said of those instruments that are absolutely creatures of the law, and perfect of themselves, that are not required to have upon their face any legal efficiency, but depend for their operation to lawful ends upon the agency of extrinsic facts? I think not; wherever a writing upon its face declares no facts, nor expresses any elements necessary to an independent, legal, and valid existence, and still may be made by the law under which it is created to operate effectually upon the rights of persons, it is, in my judgment, as much the subject of forgery as that first described. The one operates by force of intrinsic legal elements, and the other by extrinsic. Where the instrument fabricated bears upon its face, and in its nature, a character capable of operating of itself without foreign aid, it is a forgery, even though exterior facts forbid that it could by possibility effect its purpose. R. *vs.* Holden, Rmr. & R., 154. As for instance the fraudulent making of the will of another still living, is a forgery, for it is a perfect instrument and may deceive, even though the purported testator be not deceased; while the false making of the will of one dead, if not attested by the requisite number of witnesses, is no forgery, for the reason that it is not a perfect instrument, and if true would be void in law. Whether an instrument is the subject of forgery depends upon the legal, rather than the actual, consequence that may ensue, operating either upon intrinsic or extrinsic facts, and almost independent of its real effect upon the community. A writing purporting to express and declare its own legal character and effect, and to evince its lawful consequence, must be complete in that behalf, and without defect or error, or it has no legal existence whatever; for, relying upon its intrinsic nature, and deficient in that, it cannot find support in extrinsic facts and circumstances, and cannot therefore, in judgment of law, be the subject of a criminal, false similitude; while the contrary, I think, is true of securities, relying solely upon extrinsic matters;—not for a legal existence but for a lawful operation. It was

held in 2, Leach. 624, also in 2 East. P. C. 928; and in Arch. C. L. 363, that where the instrument is within the meaning of the statute, but which does not appear upon the face of the security, it is necessary to aver in the indictment, and is competent to show by extrinsic evidences, the legal character of the fabrication, how, and to what effect it would lawfully operate if true. The case of Gilchrist, 2 East. P. C.; the case of Rey *vs.* Rogers, 9 C. & P. 41; also the case of R. *vs.* Jones, 1. Leach. 52; also the case of R. *vs.* Martin, 1 Wood. C. C. 483; as well as some of the cases cited in the decision of the Supreme Court of this State, in the matter of Stearns, 25 Wendell; go to the conclusion, that where an instrument is incapable of being understood upon its face, extrinsic facts may be brought in to discover its character, and to show how fraud could be worked. And what is more important, they also demonstrate in principle (to my understanding at least), that where an instrument is the *immediate* creature of the law, and is intended to convey a right, create a liability, or carry an obligation, or in any manner to affect the interest of others, and the legislature has not deemed necessary that its legal import should appear upon its face, it is lawful to learn its nature, and the manner it is made to operate, from foreign facts; and more especially, where its validity, and value, and the way in which it affects right, property, and persons, is declared by the very law of its creation. These Prussian securities, although they do not *purport* to create an obligation, nevertheless *do* create one; they have a legal signification, and were given for a valid consideration, and whether what they signify, and the consideration for which, they were given, appear intrinsically and upon their face, or is shown extrinsically, and by an accredited authority, to which they directly refer, (the Prussian law,) is in my opinion so nearly immaterial, as to bring the counterfeiters of them clearly within the danger of our Statute. That recourse may be had to the Prussian law to establish in every respect the nature and character of these notes, with a view to render the forgers of them liable to the penalty of the law of this State, has for an authority the case of the King *vs.* Harris, Moses & Bolls, 7, C. & P. 429; who were tried in England for the forgery of certain Austrian notes, where the laws of that country were admitted by the English Judges, to show what was the legal character in Austria of the notes charged to have been counterfeited. And in that same case the prosecution proved the Defendants to have been previously engaged in the fabrication of Polish notes, and the laws of that country were likewise admitted to establish the legal and currency character of these also.

'Tis said by the defence that to utter these false Prussian notes would be a false pretence. So it would, as is the publication for fraud of all forged instruments, by which it does not follow that to promulgate them with intent to cheat is not something more—that it is not a forgery.

It was contended that the similitudes upon which this complaint was brought are not perfect—not such fabrications as were calculated to deceive, in that they are not stamped as the true securities are, and as the Prussian law requires them to be. This presents the question, whether, where the law provides that, security shall be stamped, an imitation of the genuine is, in fact, a complete similitude without being stamped in correspondence with the paper imitated. In a word, is the stamp any part of an instrument, or is it merely a character impressed upon the paper for other (independent) purposes, and not as a component part of the writing? As, for an instance, is it not in England a purely commercial regulation for purposes of revenue, and in Prussia a requisition strictly precautionary, to guard against the issue of notes to a greater amonnt than ten millions of thalers? (Sec. 17, P. L.) It is the law in England, that a bill of exchange without a stamp cannot be pleaded or given in evidence, or made in any way available in law or equity; and yet, in the case of Harkwood, 2. East. P. C., c. 19, 145, page 955, who was convicted of forging a bill of exchange, omitting to stamp it, the point that it was not therefore a forgery, was saved for the twelve judges, who unanimously decided that it was a perfect and complete instrument without a stamp, and the person justly convicted. In the case of R. *vs.* Lee, Leach 258, the same point was again raised upon an unstamped bill of exchange, and the Court held precisely as in the case last cited. Both convicts were executed. Martin and Ross, 340, was convicted of forging a promissory note upon unstamped paper. The twelve judges held the conviction proper, and, what is most important to the entire character of these Prussian bills, they declared that it was not necessary to constitute forgery, that the instrument should be available, or such as the payment of which could be enforced in a court of justice, so long as a party might be defrauded by a voluntary payment being lost to him, or he be deprived of the use of writing for a collateral purpose. The same doctrine was held in Feagues, case 2, East. P. C., p. 979, where the Court said, that if the instrument was such on its face as that if true, it would be valid, provided it had a proper stamp, the offence was complete. The same law was declared in the case of Recullist, 2. Leach. p. 703. If the want of a stamp to

false instruments, under the English statute, where no writing can be valid or enforced in a court of justice without it, is no bar to an indictment for this felony, can it be argued that these Prussian securities, the law creating which requires that they shall be stamped, "to prevent more than the amount allowed by law being issued," cannot be counterfeited without the fabrication bearing the impression of a forged stamp also—clearly not. A stamp is no part of an instrument, not an ordinary incident, but in this case an extraordinary requisite for a purpose entirely foreign to the lawful composition of the bill. I am by no means certain that to make a false stamp to impress these bills would not of itself be an offence, and it would be strange indeed that it were necessary to perpetrate a second crime to make the first complete; however this may be, I am without a doubt, that these false loan office bills are as much a forgery without the stamp as they would be with it.

The last point raised by the prisoners was, that these notes were not written, but printed instruments, and, of consequence, not subject to be falsified. It was urged that no instrument which is not embraced by the following, 45th sect. of art. 3, part. iv., chap. 1st, 2d vol.,R. S. 3d ed., is liable to be forged, viz: "Every instrument partly written, and partly printed, or printed with a written signature thereto, every signature of an individual firm, or corporate body, or of any officer of such body, and every writing purporting to be such signature, shall be deemed a writing, and a written instrument within the meaning of the provisions of this chapter." This section does not give a general definition of what is necessary to constitute such a paper as is liable to be falsified, but only and specially declares what shall be regarded as a writing or written instrument. By reference to the preceding section 33 it will be seen that the language of the act is: any "instrument" or "writing," purporting to be the act of another, &c., and it is only the term writing and not the term instrument, that is defined by this section. It is true, indeed, that a Prussian loan bill cannot be treated as a writing, for the reason that it is all printed, as well what purports to be the names and signatures of the presidents of the branches of the Prussian Bank, and of the officers of the "general administration of the loan offices," as the rest of the bill are engraved on the plate, and printed; but while this is so, is not the term instrument sufficiently comprehensive to include these securities? It is curious to notice that the section 57 which, if any declares against these fictitious bills, does not employ the word "writing" at all; but the language is, "any person who shall have in his possession any forged or counterfeited "instruments," the forgery of which

is herein before declared," &c. "Hereinbefore," viz., 33d section, which says: "any instrument, or writing, purporting to be the act of another." Still this is perhaps of no importance, as, to my understanding, the term "instrument" embraces a "writing," even though the term "writing" may not, (although I think it does,) include the full sense and extent of the term "instrument." It was undoubtedly the intention of our Legislature, in revising the statute of the State against this offence, to include not only all the instruments embraced by the provision of the revised laws of New York, and the four hundred acts of the British Parliament, as also to declare upon all the common law subjects for forgery—in fact, to provide, to the greatest possible extent, against a felony which, in the language of Justice Cowen, "is more metaphysical than any other," as in its general compass it spreads over the whole region of fraudulent device in the fabrication of forged paper, diversified almost to infinitude, as it may be by the studious adaptation of depraved ingenuity. If in truth, our statutes embrace all fraudulent writings, instruments, and papers known to the common law, and legislated upon by the British Parliament, and the Legislature of New York, of which there is no doubt, then are printed, if they be the immediate creatures of law, as well as written instruments, the subjects of forgery and the fraudulent making of similitudes of the one as well as the other (if their only difference is the one being engraved on plate and printed, and the other written with a pen) is, as was declared by the English Parliament, 1 Georg IV., c. 92. 8. 3. and repeated if not in express terms, in spirit by our statute, comprehending every species of forgery, a felony without question. Printed and written instruments are, in the language of Chief Justice Holt, (alluding to a period in English history anterior to the knowledge of printing or writing, when impressions of seals and family arms were stamped by notable persons upon wax as signs of rights and contracts) no more nor less than legal "signs," of liabilities, obligations, and claims, and these Prussian notes are "signs," certificates, witnesses of the credit of a government loaned to the citizen, and which are declared by that government to be a currency in lieu of silver, for specified purposes. To this end these papers are perfect and complete by the law of Prussia, and to falsify them for fraud is equally within the peril of our statute, as though they were written entirely by the king's hand in lieu of being printed by authority of his ordinance.

One word only is necessary with reference to the complaint against the prisoners for making the false plates upon which these notes were printed. The law of this State declares it a felony (2 R. S.

3d ed., part. iv, chap. 1, art. 3, sect. 30, 1st subdivision,) to make, or engrave, any plate in the form or similitude of any promissory note, bill of exchange, draft, check, certificate of deposit, or other evidence of debt issued by any incorporated bank in this State, or by any bank incorporated under the laws of the United States or of any State or territory thereof, or under the laws of any foreign government or country, without the authority of such bank, &c. If the false making of these plates be not in violation of this section, it is not offensive to any other statutory provision; and if I am correct in the conclusion that these Prussian papers are not the issue of a bank incorporated under the lawsof a foreign country, the plates are not in the form and similitude of any promissory note, or other evidence of debt, issued by an incorporated bank under the laws of any state or government; and the making of them, therefore, however fraudulent the intent, is no crime at law. It is no felony under our statute to engrave for fraud plates in similitude of promissory notes, or other evidences of debt, issued by a foreign government, or foreign prince, or an unincorporated institution, or private persons; nor is it in their case misdemeanor even at common law, for the reason that the making of these plates was but means in the execution of a forgery; and the lesser offence, (if there was any,) is lost in the greater crime. With respect to the false plates therefore, the prisoners must be discharged from all liability for any offence: while, if I am not in error with respect to the question of law I have considered, duty obliges me to require these defendants to answer to the crime of forgery in the false making of these Prussian Loan Office Bills, with intent to cheat the citizens of Prussia and the king and government thereof, and by which false making the citizens of this State may be in some manner affected, or injured in their property. They will answer acordingly.

SIDNEY H. STUART, Police Justice.