United States Vs. Turner

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Court : US Supreme Court

Decided On : 1833

Appeal No. : 32 U.S. 132

Appellant : United States

Respondent : Turner

Judgement :

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United States v. Turner

32 U.S. (7 Pet.) 132

ON CERTIFICATE OF DIVISION FROM THE CIRCUIT COURT OF

THE UNITED STATES FOR THE DISTRICT OF NORTH CAROLINA

SYLLABUS

Indictment in the Circuit Court of North Carolina for the forgery of and an attempt to pass, &c.;, a certain paper of writing in imitation of, and purporting to be a bill or note issued by the president, directors, and company of the Bank of the United

States. The note was signed with the name of John Huske, who had not been at any time president of the Bank of the United States, but who, at the time of the date of the counterfeit, was the president of the office of discount at Fayetteville, and was countersigned by the name of John W. Sanford, who at no time was cashier of the mother bank, but was at the said date cashier of the said office of discount and deposit. *Held* that this was an offense within the provisions of the law.

It is clear that the policy of the act extends to the case. The object is to guard the public from false and counterfeit paper purporting on its face to be issued by the bank. It could not be presumed that persons in general could be cognizant of the fact who, at particular periods, were the president and cashier of the bank. They were officers liable to be removed at the pleasure of the directors, and the times of their appointment or removal, or even their names, could not ordinarily be within the knowledge of the body of the citizens. The public mischief would be equally great whether the names were those of the genuine officers or of fictitious or unauthorized persons, and ordinary diligence would not protect them against imposition.

The defendant, Abel Turner, was indicted at May term, 1832, in the circuit court under the 18th section of the act incorporating the Bank of the United States, passed in April, 1816.

The indictment contained four counts.

The first count charged the defendant with having forged and counterfeited a bill or note issued by the orders of the president, directors, and company of the Bank of the United States, the tenor of which said false, forged, and counterfeited paper writing was as follows, to-wit:

"The president, directors, and company of the Bank of the United States promise to pay twenty dollars, on demand, at their office of discount and

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deposit, in Fayetteville, to the order of D. Anderson, cashier thereof. Philadelphia, 4 July, 1827. John W. Sandford cashier, John Huske, president,"

with intent to defraud the president, directors, and company of the Bank of the United States, against the form of the act of Congress, &c.;

The second count charged the defendant with an attempt to pass the said note, describing it in the same form, knowing it to be forged, with intent to defraud the Bank of the United States.

The third count charged the offense of passing, uttering and publishing the same note with intent to defraud the bank.

The fourth and fifth counts charged the defendant with an attempt to pass and with having passed the note to one Elliott with intent to defraud him. The note was described in the counts in the same form and terms as in the first count.

The jury found the defendant guilty on the fourth and fifth counts and not guilty as to the residue.

Upon the trial of the cause, it occurred as a question whether the attempt to pass the counterfeit bill, in the indictment mentioned knowing the same to be counterfeit, the said bill signed with the name of John Huske, who had not at any time been president of the Bank of the United States, but at the time of the date of the said counterfeit bill was the president of the office of discount and deposit of the Bank of the United States at Fayetteville, and countersigned with the name of John W. Sandford, who at no time was cashier of the Bank of the United States, but was at the date aforesaid cashier of the said office of discount and deposit, was an offense within the provisions of the act entitled an act to incorporate the subscribers to the Bank of the United States, upon which question the judges, being divided in opinion, ordered that the same should be certified to the Supreme Court of the United States for the opinion of that Court.

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MR. JUSTICE STORY delivered the opinion of the Court.

This cause comes before the Court upon a certificate of division of opinion of the judges of the Circuit Court for the District of North Carolina. The defendant, Abel Turner, was indicted for the forgery of and an attempt to pass, &c.;, a certain paper writing in imitation of and purporting to be a bill or note issued by the president, directors, and company of the Bank of the United States. The indictment contained several counts, all founded upon the 18th section of the Act of 10 April, 1816, ch. 44, establishing the Bank of the United States. Upon the trial of the cause, it occurred as a question whether the attempt to pass the counterfeit bill in the indictment mentioned, knowing the same to be counterfeit, the said bill being signed with the name of John Huske, who had not at any time been president of the Bank of the United States, but at the time of the date of the said counterfeit bill, was the president of the office of discount and deposit of the Bank of the United States at Fayetteville, and countersigned by the name of John W. Sandford who at no time was cashier of the Bank of the United States, but was, at the date aforesaid, cashier of the said office of discount and deposit was an offense within the provisions of the act. Upon this question, the court, being divided in opinion, ordered the same to be certified to this Court.

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The bill or note itself is not set forth *in haec verba,* except in the count on which the question arose and which charges that the defendant, with force and arms, &c.;,

"feloniously did attempt to pass to one S.E. as and for a true and good bill or note, a certain false, forged, and counterfeit paper writing, the tenor of which, &c.;, is as follows: 'The president, directors, and company of the Bank of the United States promise to pay twenty dollars on demand at their office of discount and deposit in Fayetteville to the order of D. Anderson, cashier thereof, Philadelphia, 4 July, 1827 -- John W. Sandford cashier, John Huske, president' -- with intent to defraud the president, directors, and company of the Bank of the United States."

The bill, therefore, purports on its face to be signed by persons who are respectively president and cashier of the bank.

One of the fundamental articles of the charter (§ 11, art. 12) declares that the bills and notes which may be issued by order of the corporation, signed by the president and countersigned by the cashier, promising the payment of money to any person or persons, his, her, or other order, or to bearer, shall be binding and obligatory on the same. So that the present counterfeit bill purports to be signed by officers, who were the proper officers to sign the genuine bills of the bank.

The persons named in the counterfeit bill not being in fact the president and cashier, although so called, the question arises whether the party is liable to indictment for an attempt to pass it, under the 18th section of the act of 1816. We are of opinion that he is, within the words and true intent and meaning of the act. The words of the act are

"If any person shall falsely make, &c.;, or cause or procure to be falsely made, &c.;, or willingly aid or assist in falsely making, &c.;, any bill or note in imitation of, or purporting to be, a bill or note issued by order of the president, directors, and company of the said bank, &c.;, or shall pass, utter or publish, or attempt to pass, utter, or publish, as true, any false, &c.;, bill or note, purporting to be a bill or note issued by the order of the president, directors and company of the said bank, &c.;, knowing the same to be falsely forged or counterfeited, &c.;, every such person, &c.;"

The case therefore falls directly within the terms of the act. It is an attempt to pass a false

bill or note, as true, purporting to be a bill or note issued by the order of the president, directors and company, for the word "purport" imports what appears on the face of the instrument. *Jones' Case,* 2 Doug. 802; 2 Russell on Crimes, b. 4, ch. 32, § 1, 345-6, 2d edition; *id.,* 363-367. The preceding clause of the section very clearly shows this to be the sense of the word in this connection. It is there said if any person shall falsely make, &c.;, any bill, "in imitation of, or purporting to be, a bill," &c.;, where the words "in imitation of" properly refer to counterfeiting a genuine bill, made by the proper authorized officers of the bank, and the words "or purporting to be," properly refer to a counterfeit bill, which on its face appears to be signed by the proper officers. In the view of the act, then, it is wholly immaterial whether the bill attempted to be passed be signed in the name of real or fictitious persons or whether it would, if genuine, be binding on the bank or not.

And it is equally clear that the policy of the act extends to the case. The object is to guard the public from false and counterfeit paper, purporting on its face to be issued by the bank. It could not be presumed that persons in general would be cognizant of the fact, who, at particular periods, were the president and cashier of the bank. They were officers liable to be removed at the pleasure of the directors, and the times of their appointment or removal, or even their names, could not ordinarily be within the knowledge of the body of the citizens. The public mischief would be equally great, whether the names were those of the genuine officers, or of fictitious or unauthorized persons; and ordinary diligence could not protect them against imposition. 2 East P.C. ch. 19, § 44, 950; 2 Russell on Crimes, b. 4, ch. 32, § 1, 341 (2d edition).

Upon examining the English authorities upon the subject of forgery and the utterance of counterfeit paper, they appear to us fully to justify and support a similar doctrine. It is, for instance, clearly settled that the making of a false instrument, which is the subject of forgery, with a fraudulent intent, although in the name of a nonexisting person, is as much a forgery as if it had been made in the name of a person known to exist, and to whom credit was due. 2 Russell on Crimes,

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b. 4, ch. 32, § 1 (2d edition), 327-333, and the cases there cited; *id.,* 470, 474; 2 East P.C. ch. 19, § 38, 940. Nor it is material whether a forged instrument be made in such a manner as that if, in truth, it were such as it is counterfeited for, it would be of validity or not. This was decided as long ago as *Deakins' Case,* 1

Sid. 142; 1 Hawk. P.C. ch. 70, § 7; 2 East P.C. ch. 19, § 43, 948. Nor is it any answer to the charge of forgery, that the instrument is not available, by reason of some collateral objection not appearing upon the face of it. 2 Russell on Crimes, b. 4, ch. 32, § 1 (2d edition), 337-341; *id.,* 470-74.

So that upon the words and policy of the act itself, as well as upon the footing of authority, we are of opinion that the offense stated in the division of opinion is within the act of 1816. And we shall accordingly certify this to the circuit court.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of North Carolina, and on the question and point on which the judges of the said circuit court were opposed in opinion, and which was certified to this Court for its opinion, agreeable to the act of Congress in such case made and provided, and was argued by counsel, on consideration whereof it is the opinion of this Court that the attempt to pass the counterfeit bill in the indictment in the proceedings mentioned, under the circumstances in the said certificate of division of opinion mentioned, in an offense within the provisions of the act of Congress stated in the same certificate, whereupon it is adjudged and ordered by the court, that it be certified to the said circuit court for the District of North Carolina, that the attempt to pass the counterfeit bill in the indictment in the proceedings mentioned, under the circumstances in the said certificate of division of opinion mentioned, is an offense within the provisions of the act of Congress stated in the same certificate.