

strict court. The *Case of Herrick*, 17 N. B. R. 335, is cited as sustaining this view. There is, however, a marked distinction between the two cases. In the case at bar the assignee was, at the earliest moment, informed that the creditor intended to prove his debt for the deficiency. The court, with the petition before it giving this notice, made an order allowing the suit to proceed in the state court, with the assignee as a party, and permitting the sale of the mortgaged property "on such foreclosure." In the original and supplemental proofs the same intention to prove the debt was expressed. With this timely information the assignee appears to have made no objection until after the second proof was filed. He was, apparently, entirely satisfied with the creditor's proceedings to ascertain the deficiency, and made no suggestion that it should be determined in any different manner. In the *Herrick Case*, on the contrary, the court says:

"It was not contemplated by the creditor, the assignee, or the court, that the action to foreclose was to be instituted for the purpose of a valuation of the security. * * * Doubtless, after an assignee has been appointed, this court could direct that the value of the creditor's security be ascertained by a sale under a decree of foreclosure; but the ordinary order granting leave to bring suit to foreclose cannot be so construed."

It can hardly be said in view of all the facts that the order here was "the ordinary order." The sale was, within the fair meaning of the section referred to, *made in the manner the court directed*. It would be unjust to permit the assignee, in such circumstances, to interpose objections for the first time after he has, by allowing the creditor to proceed to the end without a suggestion of dissent, left him entirely remediless. If the creditor had had the least intimation that the present contention was to be urged, he would quite likely have applied to the court for more specific directions regarding the sale. Hearing no objection he relied upon the sufficiency of the order.

My opinion is that the claim is valid and that the proof should remain on file.

UNITED STATES v. ABRAMS.

(*Circuit Court, S. D. New York.* December 18, 1883.)

COUNTERFEITING UNITED STATES COIN—REV. ST. § 5457—COIN CALCULATED TO DECEIVE—FURTHER ACT TO BE DONE TO PERFECT SPURIOUS COIN.

A party who has made false coins with intent to circulate them, and has carried the manufacture so far as to produce coins capable of being uttered as genuine coins, may be convicted of the offense described in Rev. St. § 5457, notwithstanding he intended to coat such coins with silver before putting them in circulation.

Before WALLACE, BENEDICT, and BROWN, JJ.

B. B. Foster, for the United States.

B. F. Tracy, for accused.

BENEDICT, J. The prisoner was indicted under section 5457 for falsely making coins in the resemblance and similitude of a coin coined at the mint of the United States known as the trade dollar. At the trial it was shown that the accused made certain coins composed of tin and antimony, resembling in shape and design the trade dollar. There was also testimony showing that the accused intended to coat these coins with silver before putting them in circulation. The jury was charged that no conviction could be had unless the coins put in evidence were found to bear such a resemblance to the genuine trade dollar as to render them capable of being used to deceive a person of ordinary intelligence; and that the prisoner could be convicted if the jury found that he made the coins with intent to circulate them, and had carried the manufacture so far as to produce coins capable of being uttered as genuine trade dollars, notwithstanding there was evidence that he intended to coat the coins with silver before putting them in circulation. The charge was correct. It is true that, in one sense, the coins were unfinished; that is to say, they were not finished as the prisoner intended to finish them. But in another and a truer sense they were finished, for they were capable of being put in circulation as genuine coin. So the jury have found. The ingredients of the offense created by the statute are an act and an intent. The act is making a false coin capable of being circulated as genuine. The intent is an intent to defraud. The jury found both act and intent proved,—and properly, for the character of what the defendant did when he made the coins was in no sense modified by proving his intent to carry the manufacture of the coins a further stage in order to make their resemblance to the genuine more complete. Whatever he may have intended to do in the future, when the accused made coins so like the genuine trade dollar as to be capable of deceiving persons of ordinary intelligence, he did the act described in the statute; and, having done that with intent to defraud, he committed the offense charged.

Motion for new trial denied.

DRYFOOS and another *v.* FRIEDMAN and another.

(*Circuit Court, S. D. New York.* January 4, 1884.)

1. PATENTS—DESIGN PATENT No. 4,802—INFRINGEMENT.

Design letters patent No. 4,802, dated April 11, 1871, and granted to William H. Walton for a design for printed material for gored skirts, consisting of printing a series of gore-shaped patterns, made to match around the lower edge in a skirt, the narrow end opposite the broad end of another, on a piece of woven fabric, so as to fill the width of the fabric, leaving blank spaces for seams, with