

UNITED STATES *v.* STEVENS.

(District Court, W. D. Virginia. April 16, 1891.)

## 1. COUNTERFEITING—NOTES IN THE SIMILITUDE OF TREASURY OR NATIONAL BANK NOTES.

The fact that a note was originally issued by a duly-authorized state bank, and that it was a legal note at the time of its issuance, does not, after it has become utterly worthless by the insolvency of the bank, exempt the holder of it from prosecution, under section 5430 of the Revised Statutes, if he has it in possession with intent to sell or otherwise use it, and pass it as a genuine note or obligation of the United States.

## 2. SAME—PROVINCE OF THE COURT AND JURY.

The question as to the similitude of such note to the treasury notes or other obligations of the United States is a question to be decided by the jury, as are also the facts as to whether the defendant had the note in question in his possession with intent to sell or otherwise use the same, and whether he knew at the time that said note was worthless.

## At Law.

Harrison Stevens had been indicted under the provisions of section 5430 of the Revised Statutes of the United States for having in his possession or custody, without authority from the secretary of the treasury or other proper officer, an obligation or other security engraved and printed after the similitude of an obligation or other security, issued under the authority of the United States, with intent to sell or otherwise use the same. In the progress of the trial the evidence disclosed that the obligation or security in question was a genuine note of the Bank of Mecklenburg, N. C., a state bank which, during its existence, had issued its obligations as lawful currency, but which had become utterly insolvent, leaving its circulating notes unprovided for and worthless; upon which disclosure counsel for defendant moved the court to arrest the trial, and instruct the jury that the having of such a note or obligation as described by the evidence in this case in possession, without authority from the secretary of the treasury or other proper officer, as alleged in the indictment, with the intent alleged in the indictment, was not a violation of the section of the Revised Statutes of the United States cited in the indictment. Motion denied.

*W. E. Craig*, U. S. Atty.

*E. B. Withers*, for defendant.

PAUL, District Judge. The indictment in this case is under the following provision of section 5430 of the Revised Statutes of the United States:

“Every person \* \* \* who has in his possession or custody, except under authority from the secretary of the treasury or other proper officer, any obligation or other security engraved and printed after the similitude of any obligation or other security issued under the authority of the United States, with intent to sell or otherwise use the same, \* \* \* shall be punished [in the manner prescribed in the statute.]”

The evidence before the court, at present, shows that the note or obligation which the defendant is charged with having had in his pos-

session, with intent to sell or otherwise use the same, was a note issued by a regularly chartered state bank, but which at the time defendant is alleged to have had in his possession the note in question was utterly insolvent and its notes worthless. The question presented to the court for its decision is, is the having in possession, without authority from the secretary of the treasury or other proper officer, with intent to sell or otherwise use, the notes of a broken bank, the said notes being worthless, but being engraved and printed after the similitude of a United States treasury or national bank note, a violation of the provision of the statute cited? The object of the provision of the statute under which this indictment is framed is manifestly to preserve the integrity of the national treasury and bank note currency, and to prevent the imposition on the public of worthless notes or obligations of any kind purporting to be the genuine obligations of the United States. It seems to the court that the fact that the note in question was originally issued by a duly-authorized bank, and that it was a legal note at the time of its issuance, does not, after it has become utterly worthless by the insolvency of the bank, exempt the holder of it from prosecution, if he has it in possession with intent to sell or otherwise use and pass it as a genuine note or obligation of the United States. The possession of such a note or obligation, with intent to sell or otherwise use it, falls within the mischief intended to be prevented by the statute. "To constitute the offense, it is not essential that the fraudulent note or obligation should on its face purport to be an obligation of the United States." *U. S. v. Williams*, 14 Fed. Rep. 551. The question as to the similitude of the note alleged to have been passed by the defendant to the treasury or national bank notes or other obligations of the United States is a question to be determined by the jury, as are also the facts as to whether the defendant had the note in question in his possession with intent to sell or otherwise use the same, and as to whether he knew at the time that said note was worthless.

Verdict, "Not guilty."

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*In re H. B. CLAFLIN Co.*

(Circuit Court of Appeals, Second Circuit. October 4, 1892.)

**CUSTOMS DUTIES—CLASSIFICATION—HEMSTITCHED HANKERCHIEFS.**

Hemstitched cotton handkerchiefs, known as such in trade and commerce at the time the tariff act of 1883 was passed, are not "hemmed handkerchiefs," within Schedule I, par. 325, thereof, imposing a duty of 40 per cent. *ad valorem*, but are dutiable at 35 per cent. *ad valorem*, under paragraph 824 of the same schedule, as "manufactures of cotton not specially enumerated." WALLACE, J., dissenting. 47 Fed. Rep. 876, affirmed.

Appeal from the circuit court of the United States for the Southern District of New York.

Application by H. B. Clafin Company for a review of a decision by the board of general appraisers, as to the classification of certain imported hemstitched cotton handkerchiefs. The collector had held that the goods were "hemmed handkerchiefs," within the meaning of the act of