

the right of a letter carrier to recover, under Act May 24, 1888, for extra service, was considered, and the term "employed" defined by Justice Blatchford, speaking for the court, as follows:

"This extra pay is given to him by the statute distinctly for his being employed a greater number of hours per day than eight. The statute does not say how he must be employed, or of what such employment is to consist. It is necessary only that he should be a letter carrier, and be employed in work that is not inconsistent with his general business under his employment as a letter carrier."

This would seem to dispose of the contention of the defendant in error by holding that he was only employed, according to the language of the act, when he was lawfully employed "in work" not inconsistent with his general business as a letter carrier.

We are of opinion that the number of such claims, or the amount that may be involved in them, is of no assistance to the court in arriving at the proper interpretation of the language of the statute, any more than an extended discussion of the history of the eight-hour law, or the inscription on the tombstone of the man who first agitated the question; and we believe these matters might properly have been omitted from briefs.

It is undoubtedly the purpose of that act to provide that a letter carrier shall not actually be employed in his duties more than eight hours per day without receiving extra compensation for the same. We are therefore clearly of the opinion that the defendant in error, during and for the short intervals, or "swings," between his trips, in which he was not actually employed, or required by any express order of the postmaster to remain in or about the office, which intervals or "swings" did not exceed one-half hour in length, and were periods in which he was not actually employed according to the statute, is not entitled to extra pay, and that the allowance in the court below for the same was erroneous. The court below allows \$136.50 for such extra employment, and to that extent the judgment should be modified. It is therefore ordered, adjudged, and decreed that the judgment of the district court in favor of Langston be reduced from \$235.72 to \$99.22, and the judgment, as so modified, be, and the same is, affirmed.

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STONE v. PERKINS et al.

(Circuit Court, E. D. Missouri. March 2, 1898.)

1. MISSOURI SWAMP LANDS—SALES ON EXECUTION.

Swamp lands, granted by congress to Missouri, and by the state legislature to Stoddard county, are held in trust for the benefit of the county public schools, and are not subject to sale on execution to pay a general judgment against the county; and no title is acquired by such a sale.

2. SAME — CONVEYANCES IN SETTLEMENT OF ILLEGAL CLAIMS — AUTHORITY OF COUNTY COURT.

In Missouri, the county courts are agents of the county to dispose of swamp school lands, but can only exercise the trust in strict accordance with the statutory scheme of disposition, which requires that such disposition shall be by sale at not less than \$1.25 per acre. Hence, conveyances made for less than that price, pursuant to a compromise and settlement effected by the court with purchasers claiming under an invalid sale on execution against

the county, are themselves invalid, as being an indirect appropriation of the land to the payment of the judgment, and as being a bartering, instead of a sale.

**3. EJECTMENT—EQUITABLE TITLE.**

In ejectment in the federal courts, plaintiff can get no support for his title because of alleged estoppel or recognition thereof by the defendant, but must stand or fall on his own legal title.

John F. Greene and Geo. O. Crane, for plaintiff.

Phillips & Walker and Lee & McKeighan, for defendants.

ADAMS, District Judge. This is an action at law to recover the possession of certain real estate located in Stoddard county, Mo. Plaintiff and defendants each claim title under grants from Stoddard county. The land in dispute is conceded to be swamp land, within the meaning of the acts of congress and the acts of the legislature of Missouri in relation to "swamp" or "overflowed" lands. Plaintiff claims title under a sale made on execution issued on a general judgment for \$1,136.80, against Stoddard county, by the circuit court of that county, in the year 1868. The judgment was rendered on March 31, 1868, in a cause in which Lewis M. Ringer was plaintiff and Stoddard county defendant. The land was sold under execution on September 16, 1868. Lewis M. Ringer became the purchaser, and his title is now held, through mesne conveyances, by the plaintiff. Without referring specially to the several acts of congress granting this and other swamp lands to Missouri, or to the acts of the legislature of Missouri granting the same to Stoddard county, I content myself with stating that it appears from such acts,—as construed by the supreme court of Missouri in the cases of *State v. New Madrid Co.*, 51 Mo. 85; *Sturgeon v. Hampton*, 88 Mo. 203; *Railway Co. v. Hatton*, 102 Mo. 45, 14 S. W. 763; and *St. Louis, C. G. & Ft. S. Ry. Co. v. Wayne Co.*, 125 Mo. 351, 28 S. W. 494,—that the land in question was held in trust by Stoddard county for the ultimate use and benefit of the public schools of the county, and was not a part of the general assets of the county of Stoddard, or subject to be sold on execution to pay a general judgment against the county. Under these authorities, the plaintiff's remote grantor acquired no title by virtue of the execution sale, and the plaintiff has acquired none by the several mesne conveyances from such grantor to him.

2. Plaintiff next claims title to the land in controversy by and through a conveyance made on the 28th day of April, 1869, by one Alferd Elzroth, acting as special commissioner for the county of Stoddard, to Lewis M. Ringer. At the time Ringer purchased the tract of land now in controversy at execution sale, divers other persons purchased different tracts of land offered for sale at the same time to satisfy the judgment of Ringer; so that there were sold on that occasion 107,000 acres of this swamp land to satisfy Ringer's judgment against the county. The several purchasers claimed title as a result of their purchases. It appears, however, that soon after these purchases were made the county court of Stoddard county was advised that the sales of this trust property to satisfy a general judgment were void, and employed W. G. Phelan and David

G. Hicks, attorneys at law, to bring suits against the several purchasers to recover the land. A contract was entered into between the county and these attorneys, by the terms of which they were to receive 50,000 acres of this land as their fee in the event of success. Before anything was done in the way of instituting suits under this contract, the county court met the several purchasers at the execution sale, and compromised with them. This compromise also necessarily involved a compromise with the attorneys, who had this contract claim to 50,000 acres of the land. By the terms of the compromise the several purchasers agreed to pay to the county of Stoddard, in sums respectively corresponding to the lands which they had purchased, the aggregate amount of \$13,500, in Stoddard county warrants, or in their promissory notes, secured by mortgages on real estate, bearing 6 per cent. interest, and payable in one and two years thereafter. The attorneys, according to the terms of the compromise, were each to receive 10,000 acres of the land in satisfaction of their rights under their contract of employment. It appears that Alferd Elzroth was appointed by the county court as a special commissioner to make, execute, and deliver to the several purchasers at the execution sale, and also to the two attorneys, Phelan and Hicks, conveyances, or "letters patent," as they are called in the order of compromise, for their respective shares of the land. It further appears that Elzroth made the deeds, in accordance with the terms of the compromise agreement, and, among them, made one to Lewis M. Ringer for his proportion of the land, which is now held through mesne conveyances by the plaintiff.

The question now arises whether this deed, made by Commissioner Elzroth, conveying the land in question, as a result of the aforesaid compromise, to the plaintiff's remote grantor, Ringer, constitutes a valid legal title to the land? In determining the effect to be given to this commissioner's deed, it must be borne in mind that the "county courts of Missouri are not general agents of the counties. \* \* \* Their powers are limited and defined by law. \* \* \* The statutes constitute their warrant of attorney. \* \* \* Whenever they step outside of and beyond their statutory authority, their acts are void. \* \* \* Persons dealing with such agents are bound to take notice of their powers and authority." Such are the conclusions reached, and the doctrine held, in the following cases: *Sturgeon v. Hampton*, supra; *Saline Co. v. Wilson*, 61 Mo. 237; *Wolcott v. Lawrence Co.*, 26 Mo. 275; *State v. Bank of Missouri*, 45 Mo. 538; *Andrew Co. v. Craig*, 32 Mo. 531.

Section 3 of the act of March 27, 1868 (Sess. Acts Mo. 1868, p. 69), in force at the time this compromise was made, as construed by the supreme court of Missouri in *Railway Co. v. Hatton*, 102 Mo. 45, 14 S. W. 763, requires the sale of all swamp lands to be for a sum not less than \$1.25 per acre, and prohibits the sale or transfer thereof for any other consideration, except, possibly, for work done or to be done in draining or reclaiming other swamp lands. The decisions of the supreme court of Missouri already quoted construe the statutes of the state, and establish rules of property, and to that extent are followed by the courts of the United States. *Burgess v. Seligman*, 107

U. S. 20, 2 Sup. Ct. 10; *Bucher v. Railroad Co.*, 125 U. S. 555, 584, 8 Sup. Ct. 974, and cases cited. Accordingly, I must hold that the county of Stoddard held the swamp lands in controversy as trustee for its schools. The county court was its agent to execute the trust, and to so execute it only in strict accordance with the statutory scheme. Under this view of the law, it is clear to my mind that the county court exceeded its authority in making the compromise agreement in question, and that the deed made by the commissioner, Elzroth, to plaintiff's grantor, pursuant to such compromise, conveyed no title for the following reasons: (1) Because the compromise was based upon a recognition that Ringer had some right to the land, arising out of the execution sale, and in the settlement with him, and the deed executed pursuant thereto, trust property belonging to the public schools was indirectly appropriated to the payment and satisfaction of a general judgment against Stoddard county. (2) Because the compromise involved a settlement of a large demand, on the part of the attorneys above named, against Stoddard county, arising out of their said contract of employment with the county. (3) Because, by the terms and provisions of the compromise, the land was bartered; that is to say, was not sold for cash, or for work done or to be done in draining or reclaiming other swamp lands. (4) Because, treating the consideration received as the equivalent of cash to the amount of the alleged face value of the securities taken (the same being \$13,500, in the aggregate, for \$107,000 acres of land sold), it amounts to only about 8 cents per acre, instead of \$1.25, as required by the act of March 27, 1868, *supra*, as construed by the supreme court of Missouri, *supra*. (5) Because the compromise as made, taken as a whole, as above analyzed, can in no proper sense be regarded as a sale and disposition of the swamp lands for the benefit of the schools of the county, under and pursuant to the statutory authority conferred upon the county court.

It cannot be contended that Ringer, plaintiff's remote grantor, or any of the intervening purchasers, are protected, as innocent purchasers, against the want of power in the county court, as all persons dealing with the county courts of this state, or with any agent appointed by county courts, are bound to take notice of their powers and authority. Not only so, but the record of the proceedings of the county court of Stoddard county, in relation to the compromise, and conferring the power upon the commissioner, clearly set forth all of the facts from which the want of power to make the conveyance fully appears. Counsel for plaintiff apparently realize the defect in the legal title of their client, but strenuously contend that the county of Stoddard, and its grantees, the defendants in this case, are estopped from questioning or denying plaintiff's legal title. This they claim because the county took no action in the way of asserting any adverse claim to the plaintiff's until the year 1892, when it executed a proper conveyance of the lands to the defendants, and because, during this time, plaintiff and his grantors have exercised rights of ownership over the land in making divers conveyances thereof, and in paying taxes assessed against the same during this period; in other words, because the county of Stoddard, defendants' grantor, so ac-

quiesced in plaintiff's title that it and its grantees, the defendants in this case, are now estopped from denying the validity of the same. In considering this contention, it must be borne in mind that plaintiff's action is an action at law,—an action of ejectment, pure and simple. The defendants' answer consists of a general denial only. The form and substance of the pleadings cannot be criticised, because they present the only issue available to the parties in such actions in the courts of the United States. It is well settled that legal and equitable claims cannot be blended together in one suit in the circuit courts of the United States. *Bennett v. Butterworth*, 11 How. 669; *Thompson v. Railroad Co.*, 6 Wall. 134; *Scott v. Neely*, 140 U. S. 106, 11 Sup. Ct. 712; *Davis v. Davis*, 18 C. C. A. 438, 72 Fed. 81.

Whatever may be the intimations found in the several cases cited by the plaintiff's counsel in support of the proposition that the equitable estoppel claimed to exist in this case may be availed of in support of the legal cause of action set forth in the petition, it is certain that in the practice of the United States courts, where legal and equitable causes of action cannot be blended, plaintiff can get no support to his legal title in this case by reason of any such equitable consideration. He must stand or fall on his own legal title, and cannot rely upon the weakness of the defendants' title. If this were an action in equity, setting forth all of the facts of the case, defendants might avail themselves of their equitable rights, if any they have; but in this case, for the reasons already stated, they cannot do so. Having reached the conclusion that the plaintiff has no legal title, there is no other course to pursue but to render a judgment in favor of the defendants. It is accordingly done.

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JACKSONVILLE, M. & P. RY. & NAV. CO. et al. v. HOOPER et al.

(Circuit Court of Appeals, Fifth Circuit. February 15, 1898.)

No. 606.

APPEAL—RELEASE OF SURETY ON SUPERSEDEAS BOND—AGREEMENT FOR SETTLEMENT.

Pending proceedings to review a judgment against a railroad company, it paid to the plaintiff a sum in cash, and delivered certain bonds in escrow, on an agreement that, if the bonds should advance in market value to par within a year, they should be accepted by the plaintiff in full satisfaction of the judgment. They failed to reach the stipulated value, and were tendered back. The proceedings in error were not dismissed, but resulted, after the expiration of the year, in an affirmance. *Held*, that such transaction did not discharge the sureties on defendant's supersedeas bond.

Pardee, Circuit Judge, dissenting.

In Error to the Circuit Court of the United States for the Southern District of Florida.

This was an action by Mary J. Hooper and Henry H. Hooper, her husband, and William F. Porter, for the use of Mary J. Hooper, against the Jacksonville, Mayport & Pablo Railway & Navigation Company, Mary Wallace, and John N. C. Stockton, on a supersedeas bond. There was judgment for plaintiffs, and defendants bring error.

A. W. Cockrell, A. W. Cockrell, Jr., and R. S. Cockrell, for plaintiffs in error.

James R. Challen, for defendants in error.

Before PARDEE and McCORMICK, Circuit Judges, and SWAYNE, District Judge.

McCORMICK, Circuit Judge. The defendants in error summoned the plaintiffs in error to respond in an action of debt on bond. From the view that we take of the case it is not necessary to make any preliminary statement of the pleadings. The case proceeded in the usual manner until it was ready for trial. The parties, by written stipulation duly filed, submitted the cause to the court without a jury. Thereupon, after hearing the evidence and the argument of counsel, and duly considering the same, the court found as matters of fact:

"(1) That there was a judgment given and entered in this court on May 8, 1891, for \$6,799, and \$125 costs, in favor of the plaintiff and against the J., M. & P. Ry. & N. Co., defendant herein.

"(2) That a writ of error was taken from said judgment to the supreme court, and such proceedings had thereon that the said judgment was affirmed [16 Sup. Ct. 379], and a mandate issued thereupon on the 14th day of February, 1896, to this court.

"(3) That in suing out said writ of error a supersedeas bond was made and filed herein, with the defendant the J., M. & P. Ry. & N. Co., principal, and the defendants Mary Wallace and J. N. C. Stockton, sureties. That on the 7th of April, 1893, there was an agreement had by and between the plaintiffs, by their attorney, James R. Challen, and the president of the said defendant company, Archer Harmon, by which \$600 in money was to be paid said J. R. Challen, and six one thousand dollar bonds of said company were to be delivered to said J. R. Challen, attorney, to be held in escrow, and a satisfaction piece and a præcipe to dismiss said suit was to be signed by J. R. Challen. That said satisfaction piece and præcipe for dismissal of the suit were issued and signed by said J. R. Challen, and a written agreement was signed by Archer Harmon, president of said company, and given said J. R. Challen, providing that such cancellation of the judgment should not be entered until the defendant's road was fully completed to South Jacksonville Ferry, and \$75,000 of the bonds of the company were destroyed, and such combination made or guaranty given as should bring the remaining bonds to par in the market; and if that should not be done within one year, the cancellation piece should be returned upon his surrender of the six \$1,000 bonds left in escrow, and the judgment should remain in force as if the negotiation for settlement had never been made. If the above was complied with, the cancellation should become absolute, but if entered without compliance with said conditions the same should be void, and the judgment not canceled. That such agreement was made by the president of the defendant company, without notice to or knowledge of the sureties upon said supersedeas bond, or knowledge of the secretary and treasurer of said company, who paid said \$600 and delivered said bonds upon the presentation of the satisfaction piece, and without the authority of the company. That said satisfaction piece and præcipe to dismiss was presented to Stockton, secretary and treasurer of the company, who understood that it was final settlement of the judgment, and with that understanding paid the \$600 and delivered the six one thousand dollar bonds. That said cash would not have been paid nor bonds delivered by the said secretary and treasurer, had he known of the conditions of said agreement made with the president of the company, but he supposed and considered that said agreement was a final settlement. That, the conditions of agreement which were to increase the value of the bonds not being complied with, the bonds were tendered by said Challen to said Harmon, president of said company, who declined to receive them, and they were filed by the directions of said Harmon in this court in a suit pending against said company, as being held in escrow by Challen.

That at the time the plaintiffs' attorney made and issued the satisfaction piece and præcipe to dismiss said suit it was not intended by him to be an unconditional satisfaction and settlement of the suit, but a conditional one, depending upon the acts of the defendant company, and this was known by Harmon, the president of the company, with whom the agreement was made, but not by Stockton, secretary and treasurer, who paid the \$600 and delivered the bonds. That the bonds proved to be of very little, if of any, value. That the \$600 was not paid on account of or as a matter of interest, but on account of the judgment. And the court finds, as a matter of law, that the proposed agreement and conditional settlement was not a valid final settlement and payment or satisfaction thereof; that, notwithstanding such agreement and conditional settlement between the plaintiffs and the principal upon said bond, the sureties were not harmed or injured thereby, and are not discharged therefrom; that the payment of the six hundred dollars is not to be controlled by the rules for the computation of interest in partial payments upon promissory notes, but that the six hundred dollars, with interest from the time of its payment, should be deducted from the amount of the judgment. And the court further finds, as a matter of law and fact, that the defendants are jointly and severally indebted to the plaintiffs herein in the sum of \$9,238.41, together with all costs to be hereinafter taxed and allowed, for which they should have judgment."

On which findings of fact the court adjudged that the plaintiffs (defendants in error) are entitled to recover the sum of \$9,238.41 from the defendant (below) Jacksonville, Mayport & Pablo Railway & Navigation Company, as principal, and the defendants Mary Wallace and J. N. C. Stockton, as sureties, and also the further sum of \$129.45, costs of this suit, to be taxed, for which said sums judgment and execution are awarded. Thereupon the defendants (below) sued out this writ of error, and in their assignment of errors say:

"(1) Upon the findings of fact herein, the judgment, on the issues raised by the pleadings, should have been for the defendants. (2) Upon the findings of fact herein, the said Stockton and Wallace were severally discharged as sureties on the supersedeas bond sued upon. (3) The acceptance by the said plaintiffs of the \$600 in cash, and the acceptance of six bonds, of the par value of \$1,000 each, in escrow, conditioned as alleged, to be kept at par for a definite space of time, was a discharge of the said sureties. (4) Upon the findings of fact herein, the remedy of the plaintiffs was an action against the defendant railway company for breach of the alleged contract to maintain the said bonds at par. (5) That payment of a part of the judgment in cash, and other consideration, such as the delivery of six bonds, of the par value of \$1,000 each, was a sufficient payment of a judgment pending a writ of error already sued out and then not called for hearing in the appellate court. (6) The findings of fact by the court make out no other or different cause of action than that pleaded by way of replication to the tenth and eleventh pleas as amended, held insufficient on demurrer."

It seems manifest to a majority of this court that the errors assigned raise no question on the rulings of the circuit court during the progress of the trial, and that the questions for consideration are: (1) Are the pleadings sufficient to support the judgment? And (2) do the findings of fact support the judgment?

It seems to us that the first question is not seriously contested, or susceptible of serious contest. The declaration counts with apt words on the bond, and shows substantially, as it appears in the court's finding of fact, the amount of the judgment which it was executed to supersede pending the writ of error to the supreme court.

The serious contention, touching the question of the findings of fact supporting the judgment, relates to the effect that should be given to the agreement, shown to have been executed on the 7th day of April, 1893, as presented in the third finding of the circuit court. In the

oral argument of the plaintiffs in error there appeared an effort to treat the negotiations had on that day as resulting in two agreements, instead of one. It is manifest, however, from the language in the defendants' plea and in the finding of the court as to the facts, that the papers executed by the plaintiffs' attorney and the paper executed by the president of the defendant railway corporation constitute one agreement. The conduct of the defendants in error subsequent to the 7th of April, 1893, manifests this as fully as the letter of the papers. It is suggested, and urged with apparent seriousness, that the negotiations effected a contract upon the part of the defendants in error to forbear in the prosecution of their claim on the judgment for the period of one year. We must bear in mind that the defendants in error were at that time defendants in error in the supreme court, and that the burden of the prosecution of the litigation between the parties rested upon the plaintiffs in error in that court, who are now plaintiffs in error in this court. If the agreement made on the 7th of April, 1893, had the effect, or could have been used to effect what the plaintiffs in error here claim that it did effect, it is difficult to see why the secretary and treasurer, Stockton, did not immediately cause to be dismissed the writ of error in the supreme court, and, with the "satisfaction piece and præcipe to dismiss" in hand, insist upon the dismissal of the plaintiffs' case or satisfaction of the judgment in the circuit court. It is a matter of common knowledge—certainly, of common judicial knowledge—that at the time the writ of error was taken, to review and reverse the judgment to supersede which the writ of error bond here declared on was executed, the docket of the supreme court was so clogged with accumulation of causes that the parties could not expect to procure a hearing in ordinary cases earlier than about the expiration of four years from the time the writ of error was docketed in the supreme court. And it appears that in point of fact that writ of error was not heard and determined until after the expiration of the period of four years from the time it was sued out. Taking into consideration this situation of the parties, and their respective conduct, we repeat, it is difficult to see that the negotiations had on the 7th of April, 1893, had any tendency to stay the diligence of the defendants in error here in the prosecution of their demands against the plaintiffs in error. It will be observed that Stockton's action in this matter was not taken as one of the sureties on the writ of error bond, but as secretary and treasurer of the corporation.

Some stress is laid upon the fact that these transactions were had with the president of the company, without the authority and without the knowledge of the company. It is equally apparent that Stockton, so far as he acted in connection with the delivery of the bonds and paying the \$600, acted without the authority of the company. And it might be interesting to consider whether, if the company was not bound by the negotiations that took place, was the other party bound? Upon the whole case, the majority of this court concur with the judge of the circuit court in his conclusion that the defendants are jointly and severally indebted to the plaintiffs in the sum for which the circuit court rendered judgment against them. Therefore the judgment of the circuit court is affirmed.



PARDEE, Circuit Judge (dissenting). According to the facts as found by the trial judge, there was an agreement made between the principals, looking to a settlement of the judgment to supersede which John N. C. Stockton and Mary Wallace were sureties. To carry out the terms of this agreement a contract was made between the principals for a delay of one year, for which, and to secure which, bonds were deposited and money actually paid. In my judgment this contract for delay released the sureties, unless having knowledge of the same they consented thereto, and this irrespective of damage *vel non* resulting from the delay granted. The following authorities are sufficient to sustain this proposition: *Miller v. Stewart*, 9 Wheat. 702; *Martin v. Thomas*, 24 How. 315, 317; *Reese v. U. S.*, 9 Wall. 21; *Scott v. Scruggs*, 9 C. C. A. 246, 60 Fed. 721; *Earnshaw v. Boyer*, 60 Fed. 528; *Gato v. Warrington*, 37 Fla. 542, 19 South. 883. Whatever inferences may be drawn from the findings of fact as to the knowledge and consent of Stockton, the findings are clear that the agreement was made without notice to, and without the knowledge of, Mary Wallace.

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UNITED STATES v. KUHL.

(District Court, S. D. Iowa, W. D. February 19, 1898.)

**1. CRIMINAL LAW—REFUSAL TO SUBMIT CASE TO JURY—INDICTMENT.**

Where, from the inspection of an indictment, it becomes clear to the court that, if a jury should find defendant guilty under the evidence on which it is conceded the government would be compelled to rely, a new trial would necessarily be granted, the indictment will be quashed.

**2. SAME—COUNTERFEITING—SIMILITUDE OF OBLIGATION.**

The "similitude" contemplated in Rev. St. § 5430, which makes criminal the having in one's possession, with intent to sell or use the same, "any obligation or security engraved and printed after the similitude of any obligation or other security issued under the authority of the United States," is such a likeness or resemblance as to be calculated to deceive an honest, sensible, and unsuspecting man of ordinary care and observation, when dealing with a supposed honest man.

**3. SAME—SIMILITUDE OF OBLIGATION GENERALLY FOR JURY.**

Under Rev. St. § 5430, a Confederate bank or other bill or note may have the similitude therein contemplated, and yet be neither forged nor counterfeit. It is generally sufficient if such note, in its grouping of vignette, engraving, promise to pay, figures denoting denomination, or in color or tint, bears a marked similitude to national currency. And this is ordinarily a question for the jury.

**4. SAME—SIMILITUDE—CONFEDERATE NOTE.**

An ordinary Confederate States five-dollar note does not bear to the national currency the "similitude" contemplated in Rev. St. § 5430, notwithstanding such notes are frequently accepted by mistake as money.

**5. SAME—SIMILITUDE OF OBLIGATION.**

Rev. St. § 5430, making it a crime for a person to have in his possession, with intent to sell or use the same, any obligation engraved and printed after the similitude of an obligation issued under authority of the United States, does not make the worthless character of the imitation, nor the intent to defraud by its use, material in constituting the crime.