

Opinion of the Court.

INGRAHAM *v.* UNITED STATES.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE
DISTRICT OF RHODE ISLAND.

No. 379. Submitted October 23, 1894. — Decided December 17, 1894.

Pointer v. United States, 151 U. S. 396, sustained and applied to the point that it is not error to join distinct offences in one indictment, in separate counts, against the same person.

A person who presents to the Third Auditor of the Treasury what purports to be an affidavit before a justice of the peace in support of a fraudulent claim against the Government, is estopped to deny that the document was not an affidavit when presented in evidence in criminal proceedings against him for such fraudulent act.

It is not necessary, in the first instance, in order to prove such offence, to produce the commission of the justice, or to introduce other official evidence of his appointment.

THE case is stated in the opinion.

Mr. Charles H. Page and *Mr. Franklin P. Owen* for plaintiff in error.

Mr. Assistant Attorney General Whitney for defendants in error.

MR. JUSTICE HARLAN delivered the opinion of the court.

By the first count of an indictment in the court below it was charged that the plaintiff in error, Royal Ingraham, on the 11th day of December, 1890, within the District of Rhode Island, did knowingly, wilfully and unlawfully make and present and cause to be made and presented for payment and approval to the Third Auditor of the Treasury of the United States of America a claim for payment and reimbursement to him of certain alleged expenses of the last sickness and burial of his mother, Freelove Ingraham, who in her lifetime had been a pensioner of the United States of America under a pension issued to her, and who prior to the above date had died leaving no widower or minor child surviving her; which claim

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it was alleged was false, fraudulent, and fictitious in that it was stated in it that the last sickness of the pensioner continued uninterruptedly from July 21, 1889, to the date of her death on the 19th day of September, A.D. 1890, that he had actually paid to Perry Ingraham and Mary Ingraham for board, nursing, and medicines furnished to the pensioner the sum of three hundred and eighteen dollars, and to one Zylphia Ingraham for services as nurse the sum of one hundred and forty-eight dollars and fifty-seven cents; whereas, the last sickness of the pensioner was of only a few days' duration, and the defendant had not at the time when he made his claim paid to Perry Ingraham and Mary Ingraham any sum for board, nursing, and medicine so furnished, and to Zylphia Ingraham any sum for services as nurse, he then and there well knowing his claim to be false, fraudulent, and fictitious, and the Third Auditor being then and there authorized to approve and allow it.

By a second count in the indictment it was charged that the plaintiff in error on the 11th day of December, 1890, for the purpose of obtaining and aiding to obtain the payment and approval of the above claim, did knowingly, wilfully and unlawfully use and cause to be used a certain false affidavit, to wit, the affidavit of Perry Ingraham and Mary E. Ingraham, subscribed and sworn to on the 9th day of December, A.D. 1890, before Daniel H. Remington, a justice of the peace, he then and there well knowing that said affidavit contained the fraudulent and fictitious statement that on the 1st day of November, 1890, they, Perry Ingraham and Mary E. Ingraham, received from him the sum of \$318 in payment of an account therein stated for board, nursing, and medicine furnished to the pensioner, Freeloove Ingraham, in her lifetime; whereas they, or either of them, did not, at any time prior to the making of such affidavit, receive from him any sum in payment of an account for board, nursing or medicine so furnished or for any services rendered to said pensioner.

There was evidence before the jury tending to show that the accused presented to the Third Auditor of the Treasury of the United States and used and caused to be used before that officer in the prosecution of his claim against the government

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of the United States a certain paper in the form of and purporting to be an affidavit signed by Perry Ingraham and Mary E. Ingraham, and purporting to be sworn to before Daniel H. Remington as a justice of the peace, and certified to that effect by him. But there was no further testimony tending to show that Remington was duly commissioned and qualified as a justice of the peace and was authorized to administer oaths. Nor does the bill of exceptions state what evidence, relating to other points, was adduced before the jury.

At the conclusion of the evidence the prisoner presented several requests for instructions to the jury. These requests were refused, and an exception was properly taken to the action of the court.

After a verdict of guilty, and the denial of a motion in arrest of judgment, the defendant was sentenced to one year's imprisonment at hard labor in the state-prison. 49 Fed. Rep. 155.

The indictment in this case was based on section 5438 of the Revised Statutes of the United States. So much of that section as is relevant to this case is in these words: "Every person who makes or causes to be made, or presents or causes to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, any claim upon or against the government of the United States, or any department or officer thereof, knowing such claim to be false, fictitious or fraudulent, or who, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, makes, uses, or causes to be made or used, any false bill, receipt, voucher, roll, account, claim, certificate, affidavit or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, . . . every person so offending in any of the matters set forth in this section shall be imprisoned at hard labor for not less than one nor more than five years, or fined not less than one thousand nor more than five thousand dollars."

1. Although each count of the indictment charged a distinct offence, it was not error to embrace both offences in one indictment in separate counts. Such joinder, where two or more acts or transactions are connected together, or are of the same

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class of crimes or offences, is expressly provided for in section 1024 of the Revised Statutes. The subject of the joinder of distinct offences in one indictment against the same person was fully examined in *Pointer v. United States*, 151 U. S. 396, 400.

2. The paper presented by the defendant to the Third Auditor of the Treasury of the United States in support of his claim against the government, purporting to be the affidavit of Perry Ingraham and Mary E. Ingraham, certified by Daniel H. Remington, as a justice of the peace in Rhode Island, was admissible in evidence without formal proof that Remington had been duly commissioned and had duly qualified as a justice of the peace. Even if Remington had not been properly commissioned, or had not qualified so as to entitle him, in law, to discharge the functions of a justice of the peace, the paper presented by the defendant to the Third Auditor of the Treasury for the purpose of obtaining the payment or approval of his claim, being in the form of an affidavit, must, for all the purposes of this prosecution, be taken to be an affidavit. If he knew that the statement in that paper, described in the indictment, was fraudulent or fictitious, he was not the less guilty under the second count, because of the fact, if such was the fact, that Remington had not been duly commissioned as a justice of the peace, and was not, for that reason, entitled to administer the oath certified by him. The essence of the offence charged in the second count was the use by the defendant of a document or writing known by him to contain a fraudulent or fictitious statement made to secure the payment or approval of his claim. He is estopped to deny that the document or writing so used was not what it purports to be, namely, an affidavit.

Besides, the contention of the accused could not be sustained even if the word "affidavit" in section 5438 were held to imply a declaration or affirmation in writing, sworn to or affirmed before some officer duly appointed and having legal authority to administer oaths or to take affirmations. It is not suggested nor could it be said that Remington, if duly commissioned or appointed a justice of the peace, was without such authority.

Syllabus.

Pub. Stat. R. I. c. 23, § 9. But having acted in that capacity, the presumption will be indulged, nothing to the contrary appearing, that he was duly commissioned or appointed to the office whose functions he exercised. It was not necessary, in the first instance, in order to prove the offence charged, to produce his commission or introduce other official evidence of his appointment. Such is the general rule. It is one of public convenience and of long standing. *Berryman v. Wise*, 4 T. R. 366; 1 Greenleaf's Ev. § 92; 1 Bishop's Cr. Pro. § 1130, and authorities cited; 1 Wharton Cr. Ev. § 833, and authorities cited; *Reg. v. Roberts*, 14 Cox Cr. Cas. 101, 103; *Reg. v. Howard*, 1 Moody & Rob. 187; *Rex v. Verelst*, 3 Camp. 432.

What has been said meets all the points suggested in the brief of counsel for the plaintiff in error.

Judgment affirmed.

 POTTER v. UNITED STATES.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

No. 531. Argued November 14, 15, 1894. — Decided December 17, 1894.

In an indictment for a statutory offence, while it is doubtless true that it is not always sufficient to use simply the language of the statute in describing the offence, yet, if such language is, according to the natural import of the words, fully descriptive of the offence, then ordinarily it is sufficient.

A charge in an indictment that the defendant was president of a national bank, and as such on a day and at a place named unlawfully, knowingly, and wilfully certified a certain cheque, (describing it,) drawn upon the bank, and that the drawer did not then and there have on deposit with the bank an amount of money equal to the amount specified in the cheque, is a sufficient averment of the offence described in Rev. Stat. § 5208, the punishment for which is provided for in the act of July 12, 1882, c. 290, 22 Stat. 162, 166.

As it is of the essence of the offence against those acts that the criminal act should have been done wilfully, a person charged with it is entitled to have submitted to the jury, on the question of "wilful" wrongdoing, evidence of an agreement on the part of the officers of the bank that it should be treated as a loan from day to day, secured by ample collateral,