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the validity of the will, and that the defendant is ready to carry the trust into execution.

Before the court can decide the intricate questions which grow out of this will, we think it necessary to possess some information which the record does not give. The domicile of General Kosciuszko is not stated; he was a native of Poland, and died in Switzerland; whether he was domiciled in Switzerland or not, does not appear. The law of domicile, with respect to wills, in cases of testacy, or regulating distribution, in cases of intestacy, may be material. It also appears, that the testator made a will in Europe. From the manner in which the subject is mentioned, we presume, that this makes no disposition of his property in the United States; but since we are informed of its existence, it would be desirable to see it.

We do not think the case properly prepared for decision; and therefore, direct that the decree be reversed and the cause remanded, with liberty to the plaintiff to amend his bill.

Decree reversed.

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Criminal law.—Counterfeiting.

Indictment in the circuit court of North Carolina, 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, founded on the 18th section of the act of 1816, establishing 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. Sandford, 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 offence 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 cognisant 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.

CERTIFICATE of Division from the Circuit Court of North Carolina. 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 *deposit, in Fayetteville, to the order of D. Anderson, cashier thereof—Philadelphia, the 4th of July 1827—John W. Sandford, cashier, John Huske, president"—with intent to defraud the president, directors and company of the Bank of the

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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 offence 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 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 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 offence 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.

The case was argued by the Attorney-General, for the United States ; no counsel appeared for the defendant.

The *Attorney-General* stated, that the note described in the indictment, was in all respects the same as a note of the mother bank, excepting the *134] signatures of the president and *cashier of the bank. Instead of those signatures, the names of the president and cashier of the branch bank at Fayetteville were affixed to the note. The question is, whether this bill came within the description in the 18th section of the act incorporating the bank, which punishes the offence charged as counterfeiting a bill or note issued by order of the bank? The question turns upon the interpretation of the "purport" in the section. If the paper purports to be a bill or note of the bank, it is enough ; although it may not be signed by the proper officers of the bank. The cases which have been decided in England fully maintain this position. They are found in 2 Russell on Crimes 338, 340, 342, 344-6, 363, 365-6, 456, 470-1 ; and in 10 Petersdorff's Abr. 55-6.

STORY, Justice, 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 the 10th of April 1816, ch. 44, establishing the Bank of the United

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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 offence within the provisions of the act. Upon this question the court, being divided in opinion, ordered the same to be certified to this court.

*The bill or note itself is not set forth *in hæc 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, the 4th of 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. [*135]

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 their 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 “pur- [*136] port” imports what appears on the face of the instrument. *Jones’s Case*, 2 Doug. 802; 2 Russell on Crimes, b. 4, ch. 32, § 1, p. 345–6, 2d edition; *Ibid.* 363–7. 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

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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 cognisant 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, p. 950; 2 Russell on Crimes, b. 4, ch. 32, § 1, p. 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 non-existing 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, *b. 4, ch. 32, § 1 (2d edition), *137] p. 327-33, and the cases there cited; Ibid. 470, 474; 2 East P. C. ch. 19, § 38, p. 940. Nor is it 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's Case*, 1 Sid. 142; 1 Hawk. P. C. ch. 70, § 7; 2 East P. C. ch. 19, § 43, p. 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), p. 337-41; Ibid. 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 offence 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 offence within the provisions of the act of congress stated in the same certificate: Whereupon, it is adjudged and

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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 offence within the provisions of the act of congress stated in the same certificate.

*UNITED STATES v. JOHN B. MILLS.

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Criminal law.—Indictment.

The defendant was indicted upon the 24th section of the act of congress of 3d March 1825, entitled "an act to reduce into one the several acts establishing and regulating the post-office department," for advising, procuring and assisting one Joseph I. Straughan, a mail-carrier, to rob the mail; and was found guilty. Upon this finding, the judges of the circuit court of North Carolina were divided in opinion on the question, whether an indictment founded on the statute for advising, &c., a mail-carrier to rob the mail, ought to set forth or aver that the said carrier did in fact commit the offence of robbing the mail?

The answer to this, as an abstract proposition, must be in the affirmative; but if the question intended to be put is, whether there must be a distinct substantive averment of that fact—it is not necessary. The indictment in this case sufficiently sets out, that the offence had been committed by the mail-carrier.

The offence charged in this indictment is a misdemeanor, where all are principals; and the doctrine applicable to principal and accessory in cases of felony, does not apply. This offence, however, charged against the defendant, is secondary in its character; and there can be no doubt, that it must sufficiently appear upon the indictment, that the offence alleged against the chief actor had been committed.

CERTIFICATE of Division from the Circuit Court of North Carolina. The defendant was indicted, at the term of November 1832, of the circuit court, for an offence against the post-office laws, passed on the 2d of March 1824, entitled, "an act to reduce into one act the several acts establishing and regulating the post-office department."

The indictment contained two counts. The first count charged, that the defendant did, "at Fayetteville, on the 1st June 1832, procure, advise and assist Joseph I. Straughan to secrete, embezzle and destroy a mail of letters, with which the said Joseph I. Straughan was intrusted, and which had come to his possession, and was intended to be conveyed by post, from Pittsborough, in the district aforesaid, to Fayetteville, also in said district, containing bank-notes; the said Joseph I. Straughan being, at the time of such procuring, advising and assisting, then and there, a person employed in *one of the departments of the post-office establishment, to wit, a carrier of the mail of the United States from Pittsborough aforesaid, [*139 to Fayetteville aforesaid, contrary to the form of the act of congress," &c.

The second count was in the following words: That the defendant "did procure, advise and assist Joseph I. Straughan to secrete, embezzle and destroy a letter addressed by Joseph Small to Joseph Baker, with which the said Joseph I. Straughan was intrusted, and which came to his possession, and was intended to be conveyed by post from Pittsborough, in the district aforesaid, to Fayetteville aforesaid, containing sundry bank-notes, amounting, in the whole, to sixty dollars, of a denomination to the jurors aforesaid unknown, and of the issue of a bank to the said jurors also unknown; the said Joseph I. Straughan being, at the time of such procuring, advising and assisting, then and there, a person employed in one of the departments of