

*UNITED STATES v. SAMUEL BREWSTER.

Criminal law.—Counterfeiting.

Indictment founded on the 18th section of the act of congress, passed on the 15th day of April 1816, entitled "act to incorporate the subscribers to the Bank of the United States." The indictment charged the defendant with uttering and forging "a counterfeit bill in imitation of a bill issued by the president," &c., of the bank. The forged paper was in these words and figures:

(5) F 745

F 745 (5)

Cashier of the Bank of the United States, pay to C. W. Earnest, or order, five dollars.

Office of Discount and Deposit, in Pittsburgh, the 10th day of Dec., 1829.

J. CORREY, Cash.

A. BRACKENRIDGE, Pres.

(Indorsed)

Pay the bearer, C. W. EARNEST.

Held, that a genuine instrument, of which the forged and counterfeited instrument was an imitation was not a bill issued by order of the president, &c., of the Bank of the United States, according to the true intent and meaning of the 18th section of the act incorporating the bank.¹

CERTIFICATE of Division from the Circuit Court for the Eastern District of Pennsylvania.

At the circuit court, in October 1832, an indictment was found against the defendant, containing two counts. The first, that on the 8th day of May 1832, he, unlawfully and feloniously, did sell, utter and deliver a false, forged and counterfeited bill, in imitation of a *bill* issued by order of the president and directors of the Bank of the United States, which said false, forged and counterfeited bill, partly written and partly printed, was in the words and figures following, to wit :

(5) F 745

F 745 (5)

Cashier of the Bank of the United States, pay to C. W. Earnest, or order, five dollars

Office of Discount and Deposit, in Pittsburgh, the tenth day of Dec. 1829.

J. CORREY, Cash.

A. BRACKENRIDGE, Pres.

(Indorsed)

Pay the bearer, C. W. EARNEST.

*with intent to defraud the president, directors and company of the
*165] Bank of the United States ; he, the said Samuel Brewster, otherwise called Samuel B. Brewster, at the time he so sold, uttered and delivered the said false, forged and counterfeited *bill* as aforesaid ; then and there well knowing the same to be false, forged and counterfeited ; contrary to the form of the act of congress in such case made and provided, and against the peace and dignity of the United States of America.

The second count charged, that the defendant did sell, utter and deliver, and did cause to be sold, uttered and delivered, a false, forged and counterfeited note, in imitation of and purporting to be a note issued by order of the president and directors of the Bank of the United States, which said last-mentioned false, forged and counterfeited note, partly written and partly printed, was in the words and figures following, to-wit [describing it in the same form as in the first count], with intent to defraud the president, directors and company of the Bank of the United States ; he, the said Sam-

¹ See *United States v. Shellmire*, Bald. 370.

United States v. Brewster.

uel Brewster, otherwise called Samuel B. Brewster, at the time he so sold, uttered and delivered the said false, forged and counterfeited note as aforesaid, then and there well knowing the same to be false, forged and counterfeited; contrary to the form of the act of congress in such case made and provided, &c.

To this indictment, the prisoner pleaded not guilty; and upon the trial, the following question occurred, upon which the opinions of the judges of circuit court were opposed. Whether the genuine instrument of which the said false, forged and counterfeited instrument was in imitation, was a *bill*, issued by order of the president and directors of the said bank, according to the true intent and meaning of the 18th section of the act of congress, passed on the 16th day of April, in the year of our Lord 1816, entitled "an act to incorporate the subscribers of the Bank of the United States?" And the said judges being so opposed in opinion upon the question aforesaid, the same was, then and there, at the request of the district-attorney for the United States, stated, under the direction of the judges, and ordered by the court to be certified, under the seal of the court, to the supreme court, at their next session to be held thereafter, to be finally decided by the said *supreme court; and the court being further of opinion, that further proceedings could not be had in said cause, without prejudice to the [*166 merits of the same cause, did order that the jury impannelled as aforesaid to try said cause, be discharged from giving any verdict therein.

The case was presented to the consideration of the court, by *Taney* Attorney-General. The defendant did not appear by counsel.

Taney said, the indictment was found under the provisions of the act of April 10th, 1816, § 18, incorporating the Bank of the United States. The offence charged in the first count is selling "a counterfeit bill;" in the second count the offence alleged is selling "a counterfeit note." Under the provisions of the law, the "note" or "bill" counterfeited, must be one issued "by order of the president and directors of the bank;" but this is not such a bill. It is drawn by the president and cashier of the branch bank of Pittsburgh, on the mother bank of Philadelphia.

The attorney-general submitted the case to the court, after stating the sections of the bank-charter which refer to "bills," "notes," and "bills of exchange," thus showing that the "notes" of the bank, and "bills of exchange" are not the same; while upon other words used in the 18th section, the offence charged against the defendant might have been the foundation of an indictment, the court would decide, whether in this case as a "bill" or "note," the draft set forth in the indictment was properly described. He also cited 10 Petersd. 44, 51; 2 East P. C. 876.

THE following certificate was directed to be issued to the circuit court On a certificate of division in opinion of the judges of the circuit court of the United States for the eastern district of Pennsylvania. This cause came on to be heard, on the transcript of the record from the circuit court of the United States for the eastern *district of Pennsylvania, and [*167 on the question and point on which the judges of that 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

Farmers' Bank v. Hooff.

argued by counsel: On consideration whereof, this court is of opinion, that the genuine instrument, of which the said false, forged and counterfeited instrument, in the certificate of division mentioned, is in imitation, is not a bill issued by order of the president, directors and company of the Bank of the United States, according to the true intent and meaning of the 18th section of the act of congress, passed on the 16th day of April, in the year of our Lord 1816, entitled "an act to incorporate the subscribers of the Bank of the United States:" whereupon, it is ordered and adjudged by this court, that it be certified to the said circuit court of the district of Pennsylvania, that the genuine instrument, of which the said false, forged and counterfeited instrument in the certificate of division mentioned is in imitation, is not a bill issued by order of the president, directors and company of the Bank of the United States, according to the true intent and meaning of the 18th section of the act of congress, passed on the 16th day of April, in the year of our Lord 1816, entitled, "an act to incorporate the subscribers of the Bank of the United States."

*168] *FARMERS' BANK OF ALEXANDRIA, v. JOHN HOOFF *et al.*

Appellate jurisdiction.

R., being indebted to the Farmers' Bank of Alexandria, on certain promissory notes, exceeding in amount \$1000, conveyed to H. a lot of ground in Alexandria, exceeding \$1000 in value, devised to her by her husband, to secure the payment of the said notes, by sale of the lot; R. claimed an estate in fee in the property conveyed to the trustee. The sum due to the bank was reduced by payments to less than \$1000, and R. being deceased, a bill was filed by the bank to compel the trustee to sell the property conveyed to him by R., for the payment of the balance of the debt; the circuit court decreed that R. held no other interest in the property than a life-estate and dismissed the bill; the complainants appealed.

On a motion to dismiss the appeal for want of jurisdiction, the debt remaining due to the bank being less than \$1000, the amount required to give jurisdiction in appeals and writs of error from the circuit court of the district of Columbia, it was held, that the real matter in controversy was the debt claimed in the bill; and though the title of the lot might be inquired into incidentally, it did not constitute the object of the suit. The appeal was dismissed.

APPEAL from the Circuit Court of the district of Columbia for the county of Alexandria. In the circuit court of the county of Alexandria, the appellants filed a bill, setting forth, that a certain Mary Resler being indebted to the Farmers' Bank of Alexandria, as maker of certain promissory notes, amounting to \$1267, which notes were renewed, and were afterwards reduced by payments, in order to secure the payment of the sum remaining due to the bank, on the 10th of September 1823, made and executed a deed to John Hooff, one of the defendants, by which certain real estate, in the city of Alexandria, was conveyed to him, in trust to secure the payment of the amount due on said notes. The title of Mary Resler to the property so conveyed, was derived from the will of her deceased husband; and the bill claimed that she took a fee-simple in the property, to be defeated by her marrying again, and she having died without marrying, the property was liable to her debts. The bill proceeded to state, that

*169] James Galt and others, also *appellees, contended that Mary Resler took, under the will of her husband, no more than a life-estate in the property so conveyed in trust; and that John Hooff, the trustee, declined