that State, and from the inherent law of its nature could not emigrate or become a citizen elsewhere. As the boats were laid up on the Illinois shore when not in use, and the pilots and engineers who ran them lived there, that locality, under the circumstances, must be taken to be their home port. They did not so abide within the city as to become incorporated with and form a part of its personal property.* Hence they were beyond the jurisdiction of the authorities by which the taxes were assessed, and the validity of the taxes cannot be maintained.† In our opinion, the facts found are sufficient to support the judgment.

It has been insisted ably and learnedly by the counsel for the defendant in error, that the taxes in question are taxes upon the tonnage of vessels engaged in interstate commerce, and are prohibited by the Constitution of the United States. No argument as to this aspect of the case has been submitted by the counsel upon the other side. We have not found it necessary to consider the subject, and we express no opinion upon it.

JUDGMENT AFFIRMED.

UNITED STATES *v.* HOWELL.

1. The sixth section of the act of February 25th, 1862, to punish the counterfeiting of treasury notes is not void for repugnancy in its reference to uttering or passing such counterfeited notes.
2. Nor is an indictment pursuing the language of the statute bad because it describes the note passed by the prisoner as a false, forged, and counterfeit note of the United States, issued under the authority of that statute or of other statutes authorizing the issue of such notes.
3. The words "false, forged, and counterfeit," necessarily imply that the instrument so characterized is not genuine, but only purports to be, or is in the similitude of such an instrument, and this implication is according to good usage and is supported by adjudged cases.

ON a certificate of division between the judges of the Circuit Court for the District of California.

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* Hays *v.* Pacific Steamship Company, 17 Howard, 599; City of New Albany *v.* Meekin, 3 Indiana, 481.

† Railroad Company *v.* Jackson, 7 Wallace, 262.

Statement of the case.

Howell was indicted for passing counterfeit treasury notes, under the sixth section of the act of February 25th, 1862,* which provides:

"That if any person or persons shall falsely make, forge, counterfeit, or alter, or cause or procure to be falsely made, forged, counterfeited, or altered, or shall willingly aid or assist in falsely making, forging, counterfeiting, or altering any note, bond, coupon, or other security issued under the authority of this act, or heretofore issued under acts to authorize the issue of treasury notes or bonds; or shall pass, utter, publish, or sell, or attempt to pass, utter, publish, or sell, or bring into the United States from any foreign place, with intent to pass, utter, publish, or sell, or shall have or keep in possession, or conceal with intent to utter, publish or sell, *any such false, forged, counterfeited, or altered note, bond,* coupon, or other security, with intent to defraud any body corporate or politic, or any other person or persons whatsoever, every person so offending shall be deemed guilty of felony, and shall, on conviction thereof, be punished by fine not exceeding $5000 and by imprisonment and confinement to hard labor not exceeding fifteen years, according to the aggravation of the offence."

The indictment contained two counts.

The first count charges that the defendant "feloniously did pass, utter, publish, and sell, a certain false, forged, and counterfeited United States note, *purporting* to be a United States note issued under the authority of" said act, with intent to defraud, &c., well knowing the same to be false, forged, and counterfeited.

The second charged that the defendant "feloniously did pass, utter, publish, and sell, a certain false, forged, and counterfeited treasury note, issued under the authority of" said act, with intent to defraud, &c., well knowing the same to be false, forged, and counterfeited.

Demurrer to the indictment and joinder. Afterwards, on argument, the following questions occurred:

"1. Whether the second count in the indictment, in manner and form as therein stated, is in itself repugnant.

* 12 Stat. at Large, 347.

"2. Whether the sixth section of the act is repugnant; and whether any person could, under the said act, be legally convicted of and punished for any offence whatever other than that of altering, and causing and procuring to be altered, and willingly aiding and assisting in altering a note, bond, coupon, or other security issued under authority of said act.

"3. Whether the fourth paragraph or clause of the sixth section of the act, which is in the words following, to wit:

"'Or shall pass, utter, publish, or sell, or attempt to pass, utter, publish, or sell, or bring into the United States from any foreign place, with intent to pass, utter, publish, or sell, or shall have or keep in possession, or conceal, with intent to utter, publish or sell, any such false, forged, counterfeited or altered note, bond, coupon, or other security, with intent to defraud,'

&c., is repugnant.

"4. Whether the defendant could, under the said fourth paragraph or clause, be legally convicted of and punished for uttering or passing a forged or counterfeit note purporting to be a United States or treasury note issued under authority of said act.

"5. Whether he could, under the said fourth paragraph or clause, be legally convicted of and punished for any offence whatever, other than 'passing, uttering, publishing, or selling,' &c., an 'altered note, bond, coupon, or other security,'" &c.

On each of which questions the opinions of the judges were opposed. Whereupon the disagreement was certified to this court.

Mr. D. T. Sullivan, for the prisoner:

First. The indictment is repugnant and inconsistent in itself.

How could the note be a "false, forged, and counterfeit" note if it was issued under the authority of an act of Congress? The object of issuing treasury notes is that they may be "passed, uttered, published, and sold;" and how can the defendant, Howell, be guilty of a criminal act by doing that which it was the very object of the act should be done? The use of the adjectives "false, forged, and coun-

terfeit" are inconsistent with and repugnant to the allegation that the note was issued under proper authority; nor are qualifying words of themselves, even if there be no repugnancy or inconsistency in the indictment, sufficient to make a criminal offence.

Second. The statute under which the indictment is framed, or at least so much thereof as relates to the charge of "passing, uttering, publishing, and selling" the note in question, is repugnant and void.

The United States v. *Cantrell*,* is in point. Cantrell was indicted under act of Congress of June 27th, 1798,† for "uttering, passing," &c., a ten dollar note, "purporting to be" a note "issued by order of the president," &c., of the bank. The words "purporting to be" were not in the statute, nor were there any words such as are usually found in statutes of this character; as, for instance, "in the similitude of," "in imitation of," or others pointing against the disposing and putting off of notes *which have not been issued by competent authority.* The counsel for Cantrell made the objection which we take here, that the statute was fatally defective in not containing these or similar words, and the whole court, through Marshall, C. J., adjudged the objection to the statute to be well taken, and for that reason ordered that the judgment be arrested.

Mr. B. H. Bristow, Solicitor-General, contra.

Mr. Justice MILLER delivered the opinion of the court.

The judges of the circuit have certified to this court five questions arising on the indictment. The first question is, whether the second count of the indictment is bad as being in itself repugnant, and the four other questions relate to a similar repugnancy in the statute under which the indictment is framed. As the count to which the first question refers pursues the language of the statute, all the questions resolve themselves into the single one of whether the act, so far as it relates to altering and publishing forged or coun-

* 4 Cranch, 167.

† 1 Stat. at Large, p. 573.

terfeit notes of the United States, is itself void for repugnancy.

The objection is, that if the note which the party is charged with passing was, in the language of the statute, "issued under the authority of this act, or heretofore issued under acts to authorize the issue of treasury notes or bonds," it must necessarily be a valid or genuine note, and if it was not issued under the authority of some of these acts, the passing of the note is not made an offence by the law.

There is some degree of plausibility in this hypercriticism at first blush, which, if it were sound, would make the act void for want of any meaning, a result which one of the first canons of construction teaches us to avoid if possible, and which is at war with the common sense, which assures us that the purpose of the act was to punish the making of counterfeits of the notes and bonds described in the statute. Nor is the criticism philologically just. The offence is described as the passing of false, forged, or counterfeited notes or bonds issued under the authority of the statute. We are to give due weight to all the words employed in describing the instrument, and cannot reject the words *false*, *forged*, and *counterfeited*, if it is possible to adopt any reasonable construction which will permit them to stand. This is done by mentally supplying the ellipsis which is in general use in conversation or in writing in similar cases. We speak, for instance, of "false diamonds." According to the criticism we are considering this phrase has no meaning, because if the stones spoken of *are* diamonds they cannot be false, and if they are *false* they cannot be diamonds. But any one understands the meaning to be false stones which purport to be diamonds, or false similitude of diamonds. So we speak of a bank note. Now if the paper spoken of is a forgery it is not a bank note, which means an obligation of some bank to pay money. But here also the mind supplies the ellipsis which good usage allows, and understands that what is meant is a forged paper in the similitude of a bank note, or which on its face appears to be such a note. And in a similar manner we speak of a forged will. If the argu

ment of defendant's counsel is sound there can be no such thing as a forged will, receipt, note, or bond, because if forged they are void and therefore not notes, wills, bonds, &c. In fact the phrase "void will" or "void note," is, according to this argument, a solecism, because the instrument cannot be at once the will or note of the party, and be void.

The use of the words false, forged, and counterfeit, in the statute, imply, therefore, when applied to any of the obligations of government mentioned, that it purports to be such an instrument, but is not genuine or valid. And so are the authorities. See 2 Russell on Crimes, 801; East's Pleas of the Crown, 950.

It is conceded, that if the statute had, in describing the offences, called the instrument uttered a note, *purporting* to be issued under the authority of the statute, the difficulty would have been removed. In the case of *Rex* v. *Birch and Martin*, the indictment charged them "with publishing as true, a false, forged, and counterfeited paper writing, *purporting* to be the last will of Sir Andrew Chadwick." It was objected that the indictment was bad, because "it should have been said that they forged a certain will," which was the language of the statute, and *not a paper writing* purporting to be a will. "But," says Mr. East, who, in his Pleas of the Crown,* makes a full report of the case, "a variety of precedents were found, so that the judges held it to be good." But it is apparent, from the exception taken, and from the language of East and of Russell, that the usual mode of charging the offence was to say that the prisoner had forged the will or other paper, and that either form is good.

The case of *United States* v. *Cantrell* is relied on as holding an opposite doctrine to that we have here presented. That case was submitted without argument, and the report says that the opinion of the court was that the judgment should be arrested for the reasons assigned in the record. These reasons are that the indictment was repugnant, because it

* Page 950.

charged the prisoners with having published as true "a certain false, forged, and counterfeited paper, *purporting* to be a bank bill of the United States for ten dollars, *signed* by Thomas Willing, president, and G. Simpson, cashier." And because the statute relating to the charge set forth in the indictment is inconsistent, repugnant, and void. In this statement, the words signed and purporting are italicized, and the court may have held the indictment bad because the former word was used, thus sustaining the objection made in *Rex* v. *Birch and Martin.* Or it may have held that the language of the indictment amounted to an averment, that the bill charged to be forged was signed in fact by the president and cashier of the bank, in which case it could not have been a forgery. Or it may possibly have thought that under the peculiar language of that statute, which differs materially from the one under consideration, they were bound to hold it void for repugnancy. However that may be, we do not consider the case, as it is reported, an authority for holding the statute void which we are called on to construe.

To the first and third questions, and the first branch of the second, we answer, No.

To the fourth and fifth, and the second branch of the second, we answer, YES.

INSURANCE COMPANY *v.* WEIDE.

1. On a suit on a policy of insurance against loss of a stock of groceries in process of retail sale, by fire, it is competent, in the absence of trustworthy books and of specific evidence by persons other than the plaintiffs themselves, to show by witnesses in the town where the fire occurred, engaged in the same business with the plaintiffs, and whose annual sales were as large, that grocery merchants in that city for the six years prior to the fire had not carried, or had on hand at any one time, more than one-fifth of their annual aggregate sales, and that this was the case on the day the fire occurred. In other words, to show by the general course of trade in that branch of business in the town that