

PUBLISHED WEEKLY
BY THOMAS W. LORRAIN.
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LAW CASE.

FROM THE CHARLESTON CITY GAZETTE.

The following being considered as an important case, and the opinion of his Honor Judge NOTT, peculiarly luminous, so much of the brief as relates to the points decided, and the judge's opinion, are published at the request of many gentlemen of the bar.

THE STATE } Indictment for coining and passing counterfeit coin.
JOSEPH ANTONIO, }
 Tried before his Honor Judge BAY.
 Verdict.—Guilty of passing the dollar, knowing it to be counterfeit.

The counsel for the prisoner took exception to the jurisdiction of the court to try any offence against the coin, the jurisdiction thereof being exclusively confined to the courts of the United States. His Honor Judge Grimko presided on the first day, in the absence of Judge Bay, and decided, that the offence of coining was clearly confined to the jurisdiction of the United States court, and wished to hear further argument as to the passing. But as His Honor Judge Bay resumed his seat the following day, the whole argument was again urged, and the exceptions overruled on both points. The cause went to the jury. By the act of the legislature of this state, the possession of coining instruments is felony, and their introduction to prove "quo animo," the dollar was passed was objected to by the counsel for the prisoner, as they should have been laid in the indictment. This was overruled. A motion was made for a new trial on this ground, should the court overrule the motion in arrest of judgment, which was made on the following grounds:—

1st. Because, since the adoption of the constitution of the United States, the jurisdiction over offences against the coin is exclusively confined to the courts of the United States. The individual states can have no current coin except in their capacity as constituent parts of the United States, and an indictment stating the offence against the coin to be against "the peace and dignity of the state of South-Carolina" is bad, because the same is also an offence against the United States, and the same act cannot be an offence against two distinct sovereignties.

2d. Because, the power of coining, and regulating the value of coin being exclusively vested in the United States, all acts, such as coining or passing counterfeit coin, are offences against the power which is entrusted with the preservation of the purity of the coin, and solely cognizable in the courts of that power.

Other points were taken, but the above are substantially the ground of appeal, upon which Judge Nott has decided.

T. S. GRIMKE and B. F. HUNT for the appellant.—The Attorney-General for the State.

JUDGE NOTT'S OPINION.

All the grounds taken in arrest of Judgment, may be reduced into two:

1st. Whether under that section of the constitution of the United States, which gives to congress the power, "to coin money, to regulate the value thereof, and of foreign coin, and to provide for the punishment of counterfeiting the securities and current coin of the United States," is also given the power to provide for the punishment of passing any of the current coin thereof, knowing it to be counterfeit?

2d. If it is, whether the states, by delegating such power to congress, have constructively parted with the power which they before had over the subject, and vested it exclusively in the general government?

Before I proceed to a particular examination of these questions, I would premise that the United States must be held to possess all the attributes of sovereignty, in the most ample degree, over all the matters expressly delegated to them by the constitution, as well as over all such as are necessary to carry those, so delegated, into effect; and among those, the power to carry their own laws into operation, by providing proper punishments for the violation of them, is one. That cannot be considered a sovereign independent state, which depends on another to carry its laws into execution. A want of this power was the great objection to the old confederation, and to remedy the evil was a great object of the new one, and it would be very badly effected, by merely granting such power to the general government and leaving the individual states the power to arrest it by interposing their own laws. The constitution, in my opinion, admits of no such construction. The judicial power of the United States is not only constructively, but expressly made commensurate with the legislative. It is made to extend to all cases arising under the laws of the United States. The words are, "the judicial power (of the United States) shall extend to all cases in law and equity arising under this constitution, the laws of the United States and treaties made, or which shall be made under their authority."—art. 3d, sec. 2, Con. U. S. This is a case "arising under a law of the United States," for by the act of congress, it is made highly penal to counterfeit the current coin of the United States, or to pass it, knowing it to be counterfeit. Unless therefore, that act of congress is unconstitutional, this is one of the cases expressly and exclusively delegated to the courts of the United States. For, if their power extends to "all" the cases of this description, there can be none to which it does not extend.

It is no answer to say, it is a case also arising under a law of the state, for the constitution expressly declares that, "this constitution and the laws of the United States, which shall be made in pursuance thereof, shall be the supreme law of the land, and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding"—art. 6. Any act of a state, therefore, repugnant to a constitutional act of congress, immediately becomes a dead letter. This construction may also be inferred, from the nature of the other cases enumerated in the same section of the constitution, "all cases affecting ambassadors, other public ministers and consuls, and all cases of admiralty and maritime jurisdiction"—art. 3, sec. 2. I believe it is not pretended that the jurisdiction of state courts extends to cases of this description; yet, the same construction which would extend it to "cases arising under a law of the United States," would embrace those also. This construction is further strengthened by a view of the class of cases which immediately follows in the same section of the constitution, "to controversies between two or more states, between citizens of different states," &c. In these cases and those connected with them, the word, "all" is dropped, thereby leaving the state courts jurisdiction concurrent with the courts of the United States. If then, this is one of the cases over which the general government has exclusive jurisdiction, the state law becomes inoperative; for a state cannot give to itself jurisdiction by legislating on a subject exclusively belonging to the United States. This brings me to the inquiry, whether the act of congress providing for the punishment of passing counterfeit money, knowing it to be counterfeit, is constitutional, the consideration of which will be involved in question first above made in arrest of judgment.

That congress have power to coin money, to regulate the value thereof and of foreign coin, and to provide for the punishment of counterfeiting, it is admitted. It is also admitted they have the power to make all the laws which shall be necessary to carry into execution the foregoing powers—art. 1, sec. 8. Is it necessary then to enable congress to carry into effect the power to coin money, to regulate the value thereof, and to provide for the punishment of counterfeiting it, that they should have power to punish for passing it, knowing it to be counterfeit? If it is, then the power is expressly delegated to them, or (to put the question in another form) is it necessary to protect the current coin of the United States, by imposing penalties on those who shall pass it, knowing it to be counterfeit? If it is, then to afford it that protection is one of the powers expressly delegated to the general government. Indeed, to use the words of an eminent commentator, (Federalist, v. 1. 229) on the constitution, "had that instrument been silent on this head, there can be no doubt that all the particular powers, required as means of executing the general powers, would have resulted to the general government by unavoidable implication. No maxim is more clearly established in law or reason, than that whenever the end is required, the means are authorized; whenever a general power to do a thing is given, every necessary power to do it is included;" and that such protection is necessary to the current coin of the United States, no further proof can be required than that congress, and all the states in the union, (as long as they had power over the subjects) have furnished it. To have given to congress the power to punish the counterfeiters of the coin, while those who circulated it were to go unpunished, would have furnished it but little security—and to have left this important power to the courtesy of the state, would have been sliding back into the same situation which we were in under the old confederation, and defeating the principal one for which the new one formed.

Being of opinion, therefore, that congress have not only the power of punishing for counterfeiting the coin of the United States, but also for passing it, knowing it to be counterfeit, it only remains to examine the second section, to wit—whether the states, by delegating such power to congress, have parted with all power over the subject themselves.

It is a matter of no small difficulty, to make out, with exact precision, the line of jurisdiction between the United States and the individual states, and perhaps we shall not meet with a more correct view of the subject than is taken by the same eminent writer before quoted. He reduces the exclusive delegation of power to the United States, or the alienation of state sovereignty to three cases: 1st, where the constitution in express terms, grants exclusive jurisdiction to the union; 2d, where it grants in one instance an authority to the union, and in another prohibits the states from exercising a like authority, and 3d, where it grants an authority to the union, to which a similar authority in the state would be absolutely and totally contradictory and repugnant. Under this last case he instances that clause which declares that congress shall have power "to establish a uniform state of naturalization throughout the United States." This, observes the writer, must necessarily be exclusive, because if each state had a right to prescribe a distinct rule, then there could be no uniformity. Now if the United States had the power to regulate the value of money and of foreign coin, and to provide for the punishment of counterfeiting the current coin of the United States, they must have exclusive jurisdiction, otherwise two governments equally sovereign and independent, would have jurisdiction over the same subject, and the value of the coin, and the punishment for counterfeiting, will be different in every state. The exercise of such authority by the states, would be absolutely and totally contradictory and repugnant to the exercise of it by the U. S.

Indeed, concurrent jurisdiction, in criminal cases, between independent governments, is incompatible with sovereignty. And the United States and the individual states, are as independent as each other in all cases of a criminal nature within their respective jurisdictions, as the states themselves are. We need only look to the consequences of a contrary doctrine to be convinced of this truth. The United States punish the counterfeiting or passing of counterfeit money with fine and imprisonment. The state of South-Carolina punish the same offence with death. If a man put on his trial for such an offence, should plead in bar a conviction or acquittal in a court of the United States, would such a plea be sustained by our courts? Or let the punishments be reversed, and would such a plea be sustained in the courts of the United States? It is impossible not to see that it would not and ought not. Neither the courts of the United States, nor of the individual states, will hold an acquittal or conviction by one, a bar to trial by the other. Each must, and will insist on the right of enforcing its own penal laws, and its jurisdiction cannot be usurped by the other. The right to punish, says an eminent writer (Vattel,) arises from "the right of self defence." A state can only punish offences against its own laws, and an offence against the laws of the United States, is no offence against the laws or against "the peace and dignity" of the state of South-Carolina. One, therefore, must have the whole jurisdiction, or a person may be twice punished for the same act—first, fined and imprisoned by the courts of the United States, and then hanged by the state, which is not only contrary to the express letter of the constitution, but contrary to the eternal and unerring principles of justice. The case put of concurrent jurisdiction of courts in the same state, is not analagous. There, the offence is against the same laws, and against the same sovereignty—the crime and punishment is the same, and the law is satisfied with a trial in either tribunal having jurisdiction. The rule then must be a correct one, that where any power is delegated to the United States, and the exercise of such power by an individual state is incompatible with such delegation, it must exclusively belong to the general government.

The advocates for a concurrent jurisdiction, derive no support from the amendment of the constitution which has been relied. It does not say that the powers not "expressly" delegated, &c. shall be reserved, but that the powers not delegated; and whether expressly or by necessary implication, the effect is the same.

It is further argued, that prohibiting the states from making any thing but gold and silver, a tender in the payment of debts, necessarily implies a power in them to make them so. In answer to which, after what has already been said, I will only observe I am not disposed to admit that inference. But admit it to be correct, it only proves that a state may make certain foreign coins, current within their respective jurisdictions, which are not made so by congress. But that introduces no conflict of jurisdiction. For the power of congress to punish, extends only to the current coin of the United States.—Until therefore, congress have made a foreign coin current with the United States, they cannot punish for counterfeiting it. But that was not the ground on which this case was decided in the court below, neither has it been made a ground of argument here. It is not contended on the part of the state, that the money passed by the prisoner was not the current coin of the U. S. I cannot feel the force of the distinction taken between the coin made in the U. S. and foreign coin made current here. The words of the constitution are, "current coin," which I understand to mean as well foreign coin made current by act of congress, as coin made at the mint of the United States. The conclusion therefore, that I have come to, is, that the power of punishing the counterfeiting of foreign coin made current in the United States by act of congress, or passing the same, knowing it to be counterfeit, belongs exclusively to the general government, and the trial of persons for those offences, belongs exclusively to the courts of the United States, and the administration of criminal justice, is not a privilege which we ought to be anxious to retain, though a painful duty which we are sometimes bound to perform.

I am of opinion that the judgment ought to be reversed for want of jurisdiction. But as a majority of the court differ from me on this point, it becomes necessary to give an opinion also on the ground for a new trial.

The first ground is, that our act makes it a distinct capital crime to keep implements for counterfeiting money in one's possession. Such evidence ought not to have been admitted in the court below, on an indictment for mere passing counterfeit money. Having given an opinion on this point in another case, I do not feel under any necessity to go fully into the reasons for the opinion I now give.

I take the rule of law to be, that one distinct offence shall not be given in evidence to convict a person of another, unless the proof of one goes directly to prove the other. 1st. East. C. L. 121, 123. Thus, for instance, proof that the defendant made the identical dollar in question, might have been proper, because it would have proved unequivocally that he knew it to be counterfeit.

But proving that he had implements for coining in his possession, did not prove that he knew this dollar to be counterfeit, any more than proving that a man stole a horse for which he was not indicted, would be proof that he stole another for which he was indicted; unless indeed there were some proof by comparison or otherwise, that these were the moulds in which the dollar, (Rex. v. Ball, Campbell, 324.) by the defendant was cast. I am in favor of the motion in arrest of judgment, as well as for a new trial. (Signed) ABRAM NOTT.

GEOGRAPHY.

A DESCRIPTION OF MINORCA

And Port Mahon, the present rendezvous of the U. S. Squadron in the Mediterranean.

MINORCA, anciently called *Insula Minor*, with reference to its neighbour Majorca, the largest of the Balearic isles, is situated in the Mediterranean sea, in latitude 39 d. 59 m. north, and longitude 30 d. 45 m. east, and about fifty miles east of the river Ebro, in Spain. It forms part of a circle from south-east to north-west, and is about thirteen leagues in length, and nearly thirty-eight leagues in circumference. The inhabitants were anciently celebrated as sailors, whence this group of islands acquired the name of Balears. Minorca was successively possessed by the Carthaginians, the Romans, the Vandals, the Moors, the Arragonese and Castilians, the English, the French, and the Spaniards. It is surrounded by a number of small rocks and islets, and the whole of the south side, with very little exception, is level. The air is moist, but the soil is naturally dry. The island is divided into districts called terminos, the chief towns of which are, Ciudadella; Mahon, Alayor, Ferrarias, and Mercadal. Its principal ports are, Mahon on the east; Fomella on the north; and Ciudadella on the west. The latter, which is also known by the name of Samna, is the capital, and is a small distance inland, about ten or eleven leagues from Mahon. When the island was successively possessed by the Carthaginians and Romans, it was a place of considerable magnificence, but it has greatly declined since, and is now a place of little consequence, its port being greatly inferior to that of Mahon. It is merely a canal, bounded by rocks. The entrance is difficult, and is defended by two large cannon. The city is surrounded partly by an old wall of Moorish origin, and partly by one of modern construction, formed of bastions, with curtains of hewn stone. The streets, like those of most old cities, are narrow, and paved with unhewn stone. The most remarkable building is a cathedral, flanked with a fine tower, said to be built in the third century. The total population of the termino of which Ciudadella is the capital, probably does not amount to eight hundred.

Port Mahon, where the American squadron has its depot, is the capital of the termino of the same name. It is the most considerable of the island, containing about sixty thousand acres, and is situated on the south-east extremity of Minorca. Nearly one half the inhabitants of the island reside in this termino. The town of Mahon derives its name from Mago, the Carthaginian general, who is universally acknowledged to have been its founder. It stands on a pretty steep eminence, at the west side of the harbor, and is a tolerably large town, with narrow, ill-paved, and crooked streets. The fort of St. Philip is near the entrance of harbour, which it entirely commands, being very extensive, of great strength, with subterraneous works bomb proof, large magazines, numerous and well appointed guns, and every thing else necessary to a complete fortification. Port Mahon is the finest harbor in the Mediterranean, about ninety fathoms wide at its entrance, but widening into a spacious bay within, and extending nearly a league into the island. Beneath the town there is a fine quay, one side of which is appropriated to ships of war, and furnished with every convenience for repairing or refitting; the other to merchantmen. The castle of St. Philip was esteemed to be impregnable, before the English took it. By them it was greatly improved and strengthened; but whatever may be the opinion of its present possessors, experience has pretty well demonstrated, that no place can be considered impregnable that is not defended by a brave and vigilant garrison.

Besides the ports of Ciudadella and Mahon, the most remarkable are, Fornella and Adaya. The former is about six miles from mount Toro, the highest land on the island, is of a circular form, with a narrow entrance towards the south, and is capable of containing the largest fleet. It is defended by a small square fort, with bastions and fosses, capable of containing about three hundred men. The entrance to the port of Adaya, is hid by high lands, and is only used by fishermen. Monte Toro, is within a short distance of Mercadal, and commands the whole island. Its form is that of the frustum of a cone. Mount St. Agatha is situated N. W. of Mercadal, and is next in altitude to Monte Toro. On the summit is a chapel dedicated to the saint, and held in great veneration by the people of the island, who are exceedingly superstitious. The whole of this region is inhabited by shepherds, who feed their flocks principally on these mountains.

Minorca is exposed to the north winds, which are unfavorable to vegetation, but notwithstanding this, snow is seldom or ever seen there in winter, and the air of spring is delightfully serene and temperate. The summer is hot and dry, and in the autumn there falls a great deal of rain. The island is in many parts fertile in vegetation. Its products are wheat, barley, and maize—it produces red and white wines for exportation—plenty of olive trees are every where seen, and oranges, pomegranates, figs, lemons, water-melons, &c. together with garden vegetables, are in great plenty. By late accounts, the horses, mules, and asses, were estimated at 2000—the horned cattle at 700—sheep, goats, and smaller animals, at 45,000—and hogs at 10,000. Little poultry is raised, but the fish all around the island are excellent, and in great abundance. Its natural curiosities are, a grotto called La Cava Pevalla, near Ciudadella, and a subterranean lake; and its antiquities are Phœnician, Macedonian, Carthaginian, Grecian, Roman, and Spanish medals, in gold, silver, and bronze, that are sometimes dug up. There are likewise a number of sepulchres, vases, lamps,