Mattison, Stephen A. vs State of MO 1834 3rd D St. Louis Co 141/14

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Counterfeited coin

Nullied 43d section of MO crime act; only Congress empowered

Spanish milled dollar aka mexican dollar

Wash Dissenting

State of Missouri
County of Saint Louis } Be it Remembered that heretofore to wit at the January Term of the Circuit Court for the County of Saint Louis begun and held at the City of St Louis within and for the County aforesaid, on the fourth monday of January in the year of Our Lord One thousand eight Hundred and thirty four, the Grand Jury Empanelled and Charged to enquire for the body of the County aforesaid, returned into said Court an Indictment against Stephen A Mattison in the words and figures following to wit; State of Missouri County of Saint Louis sct; In the Circuit Court January Term A D 1834 the Grand Jurors of the State of Missouri impanneled sworn and Charged to inquire for the body of the County of Saint Louis upon their oath present that Stephen A. Mattison late of said County on the first day of November in the year of Our Lord One thousand Eight Hundred and thirty three with force and arms at the County aforesaid, one piece of false, feigned and Counterfeited Coin to the likeness and similitude of the Silver Coin Current in this State called a Spanish milled dollars then and there counterfeited contrary to the form of the Statute in such case made and provided and gainst the peace and dignity of the State and the Jurors aforesaid upon their oath aforesaid do further present the said Stephen A Mattison on the day and year aforesaid with force and arms at the County aforesaid, One piece of false feigned and Counterfeited Coin to the likeness and similitude of the Silver Coin Current in this State called a mexican dollar then and there counterfeited, Contrary to the form of the Statute in such case made and provided and against the peace and dignity of the State. Beverley Allen Circuit Attorney. and the Foreman of the said Grand Jury made thereon an endorsement as follows, to wit; A True Bill. R Graham Foreman thereupon the Clerk of the said Circuit Court issued a writ of Capias in the words following, to wit; County of Saint Louis ss; The State of Missouri To the Sheriff of the County of Saint Louis. Greeting; We command you to take Stephen A Mattison if he be found in your County and him safely keep so that you may have his body before the Judge of our Circuit Court at the next term thereof to be held at the City of Saint Louis within and for the County of Saint Louis on the fourth monday of March next then and there to answer to an Indictment found against him for Counterfeiting mexican and Spanish milled dollars (Seal) Witness Archibald Gamble Clerk of our said Circuit Court at office this sixth day of February in

the year of Our Lord One thousand Eight Hundred and thirty four Archibald Gamble Clerk — And the Sheriff of the County of Saint Louis to whom said writ was directed returned the same into Court with his return thereon endorsed in the words and figures following to wit. "Executed and have the body of Stephen A Mattison in jail of St Louis County on the 10th day of March 1834 John K Walker Sheriff — And afterwards to wit; at the march Term of the said Court in the year aforesaid on the thirty first day of March the following proceedings were had, to wit; The State of Missouri vs Stephen A Mattison. Now at this day Come as well the Circuit Attorney who prosecutes for the State in this behalf as the said defendant in his own proper person who being forthwith demanded of and concerning the premises and how he will acquit himself thereof. Says he is not guilty in manner and form as charged upon him in the said bill of Indictment, and for his trial puts himself upon Country and the Circuit Attorney who prosecutes as aforesaid doth the like. Thereupon also Come a jury, to wit; Thomas Chapman Eli L Clark. Harris P Woodbridge John B Gerard. James H Lewis Edward Chouteau James Morgan Elbridge G Saunders Thomas Hannan Samuel W Farnsworth. Bazil W Alexander and George W Eichback. twelve good and lawful men who being duly elected tried and sworn will and truly to try the traverse between the parties aforesaid on their oath aforesaid do say that the said Stephen A Mattison is Guilty of the first Count of said Indictment in manner and form as Charged upon him in the said first Count of the said bill of Indictment and they assess the punishment of the said Stephen A Mattison at six months imprisonment that he receive thirty Lashes and stand two hours in the Pillory, and that he pay the sum of twenty five dollars as a fine for the Offence aforesaid — And the Jurors aforesaid on their oath aforesaid. do further say that the said defendant is not Guilty of the second Count in the said bill of Indictment in manner and form as charged upon him in the said second Count of said bill of Indictment. therefore it is considered that the said Stephen A Mattison be acquitted of said second Count of said Indictment and that he go thereof without day — and the said defendant moves the Court in arrest of Judgment and files his reasons therefor. And the reasons filed as aforesaid are as follows. the defendant Comes & moves the Court in arrest of Judgment in this case and he assigns the following reasons / The Indictment is bad in law

2 it is bad in this that it does not allege that the coin in the Indictment mentioned was counterfeited with intention to defraud. G A Bird atty for Deft. And afterwards to wit on the twelfth day of April in the year aforesaid. Come again the Circuit Attorney who prosecutes for the State in this behalf and the said defendant by his attorney. and thereupon upon mature deliberation it is considered by the Court that the mootion of the said defendant in arrest of Judgment be overruled. And on the 14th day of April in the year aforesaid. Come again the Circuit Attorney who prosecutes as aforesaid and the said defendant being present to hear his sentence. it is considered by the Court. that the said Stephen A Mattison stand for two Hours in the Pillory and that he receive thirty Lashes on his bare back between the Hours of nine of the Clock of the forenoon and twelve of the Clock at noon on the second monday of June next. that he be imprisoned in the Common Jail of the County of Saint Louis for six months from this day. that he pay the sum of twenty five dollars for the offence aforesaid. that he pay the costs of this prosecution and that he stand committed until the sentence of the Court be fully complied with and the Sheriff being present takes charge of him accordingly

State of Missouri
County of Saint Louis } ss I Archibald Gamble Clerk of the circuit Court within and for the County aforesaid do hereby Certify that the foregoing is a full true and perfect Transcript of the Record and proceedings in the case of The State of Missouri against Stephen A Mattison as the same now remains of Record in my office

Given under my Hand and seal of Office this second day of June in the year of Our Lord One thousand eight Hundred and thirty four

Archibald Gamble Clerk

Stephen A Mattison
vs
The State of Missouri

Transcript	$1.00
Certificate & seal	0.25
Tax	0.62½
	2.12½

Filed 3d June 1834
Joseph C Brown Clerk

STATE OF MISSOURI, }
Third Judicial District, } ss.

The State of Missouri, to the Honorable the Circuit ---- Court of Saint Louis County,

GREETING:

FOR AS MUCH *as in the record and process, as well as in the rendition of Judgment, on a certain plaint which was in our Circuit Court, for our County of* Saint Louis -- *before our Judge thereof, between* The State of Missouri - - - - - - - - - - - - -

Plaintiff *, and* Stephen A Mattison defendant on an Indictment for Counterfeiting coin Spanish milled dollars and Mexican Coin - - ——

~~***Defendant***~~ ,

~~*in a plea of*~~ - - - - - - - - *as it is said, manifest error hath happened, to the great damage of the said* Stephen A Mattison - - - - ——

as by his - - - - *complaint we are informed:* W*E, being willing that the error, if any there be, should be duly amended, and full and speedy justice done to the parties aforesaid in this behalf,* COMMAND YOU, *that if judgment be thereupon given, then a transcript of the record of the judgment, with all things touching the same, you certify and send (with this writ) to our Supreme Court, to be holden at the City of St. Louis, within and for the Third Judicial District, on the* First Monday - - - - - - - *of* June instant - - - - ~~*next*~~*, that our Judges of our said Court, inspecting the record of the judgment aforesaid, may cause to be done therein, for correcting the said error, what to them of right, and according to law, shall seem meet to be done.*

In Testimony Where[of], I, [J]OSEPH C. BROWN, ***Clerk of our Supreme Court for the Third Judicial District, have hereunto set my hand and seal of Office, at Office, this*** Second —— ***day of*** June - —— ***in the year of our Lord one thousand eight hundred and*** thirty four - —— ***and of the Independence of the United States of America, the*** Fifty Eighth

Joseph C Brown Clerk

No 34 (9) 443

Supreme Court 3d Judicial District
June Term 1834

Stephen A Mattison
vs
The State of Missouri

Filed 2nd June 1834
Jo C Brown Clerk

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I Obedeence to the Commands of the within writ I return herewith a certified copy Transcript of the Record and proceedings in the case of The State of Missouri against Stephen A Mattison.

Archibald Gamble Clk

Supreme Court Third Judicial District June Term 1834

Stephen A Mattison
vs
The State of Missouri } On Error from St Louis Circuit

And said plaintiff comes & says that in the record & proceedings aforesaid there is manifest

1 Error in this that Judgment was rendered for the State against said Mattison when by Law of the Land the Indictment was so defective that no Judgment ought to have been given upon it.

2 There is also error in this in overruling said Mattisons Motion in arrest of Judgment.

And for these & other errors apparent in said Record & proceedings said Mattison prays that said Judgment may be reversed & he restored to his Liberty &c. G A Bird atty for

Pltff

And the said State of Missouri comes & says that in the record & proceedings aforesaid & also in the giving of the judgt. aforesaid there is no error in manner & form as the said pltff. hath above alleged &c.

B. Allen
Cir: attd.

No 34 June 1834

Matteson
ses
The State of Mo

Assignment of Errors
& Joinder By Bird
for Pff & Allen for
State —

443

Filed 4th June 1834
Joseph C Brown Clerk

I am not prepared to admit the right of a State to punish the crimes ~~crimes~~ committed against the United States To punish crimes committed against a State is an exertion of sovereignty and for one State to exercise any portion of the right ful sovereign power properly belonging to another is a good cause of war if the other chooses to consider it so if it does not then - The State so permitting is exercising toward the other a portion of sovreign grace No State in this union should degrade itself so far as to receive grace from any other much less should a State be willing to become the mere executioner of the will of the United States with regard to remnants of its will & power unused Do any respectable government ever yet undertake to execute the criminal code of another can the United States with any sort of decency execute the laws of treason & felony belonging to France & England crimes against the peace & dignity of those States cannot be crimes against the US If we ever undertake to do so it must be undertaken as a job on pain of employment can the State of Missouri carefully if the United States were willing choose to consider crimes done against the sovereignty of the latter as crimes committed against her also and in that way become the ministerial agent of the general government, a

M. McGuire

I concur in the opinion that the fraudulent intent ought to be charged in the indictment. I also believe that, congress having by law imposed penalties on the offence of counterfeiting the current coin of the United States, the laws of the State passed since imposing penalties on the same offence are null, and void: and any law that might have been passed by the State before Congress acted on the subject would have been superseded by such

action of Congress

G Tompkins

a/ In this case since the Opinion was delivered the counsel for the prisoner put into my hands Mr Justice Storys Constitution law I am happy to find my Opinion fully supported as to the exclusive jurisdiction of the U.S. By that Able Jurist see 3 Vol Storys Constitutional law

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M'M Gish

No 34 June 1834

Mallison
vs
The State

Filed 17th June 1834

Appeal from

Mattison
vs
The State of Missouri

This was an Indictment on the 43 section of the act of the general assembly respecting Crimes & Misdemeanors. Which section is as follows That if any person shall counterfeit or cause or procure to be counterfeited any of the Specie of gold or silver coins now current or hereafter to be current in this State or shall pay or give in payment or offer to pay or give in payment the same or to sell permit cause or procure the same to be altered or passed with an intention to defraud any person body politic or corporate being thereof duly convicted shall be fined in [illegible]

The Indictment charges that the defendant did counterfeit a Spanish Milled dollar which was current in the State on the trial the defendant was found guilty and Judgment was given against him a motion was made in arrest of Judgment for the cause that the Indictment does not charge that the defendant counterfeited the Spanish milled dollar with an intent to defraud any person The Indictment is as stated by the cause in arrest the Court overruled the motion This is assigned for error

To sustain the Indictment Mr Allen the Circuit Attorney relies on the following argument —

That the word counterfeit ex vi termini shews that the act was done with intent to defraud „To counterfeit means to copy or imitate without authority or right & with a view to deceive or defraud by passing the imitation for the Original Websters dictionary title Counterfeit —

Secondly that by a reading the section in question the words, With intent to defraud are satisfied when only refered to the passing counterfeit money without saying With an intention to defraud

As to the first point We are of Opinion that the words Counterfeited is not a technical term legally meaning that the act was done to defraud

The law requires everything which is necessary to constitute the crime should be laid in the Indictment. In this case we understand that the counterfeiting must be done to defraud and so laid in the Indictment by express words and not by Circumlocution, 4 Bl. Com 243. The rule is that when the intent constitutes a part of the offence the intent must be laid expressly in the Indictment as well as the act to which it is to be joined

The next point is whether the intent to defraud by counterfeiting is to be considered a part of the offence. This subject scarcely admits of any argument it depends on the wording of the act and the arrangment of the sentences in the section. The first part of the section declares that if any person shall counterfeit any Spanish milled dollar or pass the same or cause the same to be passed with intent to defraud &c. Why the intent here mentioned should be restrained so as only to act on the passing we can not conceive we conceive the accumulative words "with intent to defraud" attaches to all the preceding acts mentioned before it we see nothing in the words nor the nature of the subject to forbid it

The judgement of the Circuit Court on this point is reversed another point has been raised by Mr Strother counsel

for the plaintiff in Error which is that by the constitution of the United States the subject of coining money and regulating the value of foreign coin and to provide for the punishment of counterfeiting the same is given to congress and that congress has acted on that power by passing an act for the punishment of counterfeiting the Spanish milled dollars therefore the state cannot - The reversal of the Judgment on the first point in the cause will not necessarily entitle the prisoner to a release the cause might be remanded and a new indictment framed

But if this last point is decided for him no indictment which could be framed would be good. It therefore becomes necessary to consider this point

The constitution of the United States declares that congress shall have power to coin money regulate the value thereof & of foreign coin &c & To provide for the punishment of counterfeiting the securities & current coin of the United States 1. Sect. 8th sect clause 5 & 6
& particularly by the act ~~of~~ of 1806
By several acts of Congress the Spanish milled dollar was made current money of the United States

By the 20th sect of an act of congress passed 3rd march 1825 entitled an act More effectually to ~~punish~~ provide for the punishment of certain crimes against ~~the~~ the United States & for other purposes It is provided "That if any person or persons shall falsely make forge or counterfeit in the resemblance or similitude of the gold or silver coin which ~~has been~~ by law now is or hereafter may be made current in the

United States With intent to defraud any body politic. or corporate or any other person or persons Every person so offending shall be deemed guilty of felony and shall on conviction thereof be punished by fine not exceeding five thousand dollars and by imprisonment and confinement to hard labor not exceeding ten years"

By the 43 section of an act of the general assembly of Missouri respecting crimes & It is provided "That if any person shall counterfeit or cause or procure to be counterfeited any of the species of the gold or silver coins now current or hereafter to be current in this State with an intention to defraud & & every person so offending being thereof duly convicted shall be imprisoned not exceeding ten years be fined not exceeding one thousand dollars be whipped not exceeding thirty nine lashes stand in the pillory two hours and be rendered incapable of being a witness or juror or of voting at any election or holding any office of profit honor or trust within this State

The question to be decided by this court is whether under the laws and constitution of the United States the congress and the State can concurrently legislate on the subject of counterfeiting the current coin provide - different or the same identical punishments for the same act committed by a citizen To be subject to two masters in respect of ~~to~~ one and the same duty is in its nature intolerable Yet it is admitted that one case arises out of the constitution and laws of the Union and the laws of the State Where duties of a like kind must necessarily be required that is in the case of paying taxes The general government may lay and collect taxes and when this is done it forms no bar to a like demand on the part of the State The general government by special grant have a right to collect taxes from the citizens This grant to congress cannot upon any sound rules of logic be holden to be exclusive in congress and exclusive to the States inasmuch as it would be unreasonable to suppose the States could intend to part with and grant away their essential means of existence

Without money no State could exist

We have seen that the power to punish for counterfeiting the Current coin of the United States has been expressly given by the Constitution to Congress It is also declared by the 1st Sect of the first art That all Legislative powers granted ~~by the Congress~~ by the constitution shall be vested in congress which shall consist of a Senate and House of representatives and by the 18th clause of the 8th sect of the same article it is further declared That congress shall have power "To make all laws which shall be necessary & proper for carrying into execution the foregoing powers and all other powers vested by this constitution in the government of the United States or in any department or officer thereof" By the second section of the 6th art it is declared 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 anything in the constitution or laws of any State to the contrary notwithstanding" and again it is declared that ~~the Legislative power~~ By the second section of the 3rd art of the Constitution It is declared that the Judicial power of the United States shall extend to all cases in Law & equity arising under the constitution & laws of the United States &c

From this view of the constitution I conclude

~~that~~ That whenever the power is given to congress to Legislate on any particular subject or crime they cannot hamper that power to any of the States, nor to any other court than a court of the Federal government

I further say that no citizen of the United States can be lawfully called on in a State court to answer for any act by him committed the subject

matter of which is committed to the legislation of congress
The act of congress above referred to in the last section
provides that that nothing in that act shall be
construed to prevent the State legislatures from
providing punishments against the crimes
therein made punishable It is argued
by Mr Allen in behalf of the State that this
proviso authorises the State to legislate on the
same subject My view of this matter is this
that congress cannot by any permission
they may give shift from themselves the
duty of providing a punishment for
counterfeiting the current Coin much
less can they create a power on the part
of the States to legislate on any subject where
they had none before The ~~fin~~ Federalist No
45 has been cited to shew that where the consti
tution of the United States has given exclusive
jurisdiction to congress as in the case of the
exclusive jurisdiction given to legislate over
the district of Columbia there the States cannot legislate
and secondly where the States are expressly
forbidden as in the case where they are for
bidden to coin money to emit bills of credit &c
there they cannot act and thirdly where the
power to legislate is given to congress and is
not forbidden to the States yet if the exer
cise of legislation by both would be repug
nant to the nature of a due exercise of the
power on the part of congress Where the
States are forbidden to exercise the power

and that in all other cases the powers mentioned
in the Constitution may be exercised concur-
rently Supposing this classification to be correct
which I will admit is correct for the present
then how is the present power to be classed
clearly to with the third class How can Congress
exercise the power to punish counterfeiters
if at the same time the States can do the
same thing It is admitted that by the 5th
art of the Constitution of the United States no person
shall for the same offence be twice put in jeopardy
of life or member. The equity of this provision I
think extends to cases where the punishment is
upon a degree than life or member I think the
provision extends to this case where the pun-
ishment by the law of the Union is fine & imprison-
ment I ask how is this man to be protected
from an Indictment in the District court
of the United States It is answered by the
circuit Attorney That he could in the United
States court plead this conviction in bar
Is it true that an acquittal conviction or pardon
upon conviction of and for an offence against
the law of Missouri is a good bar to an In-
dictment for the same act create an offence
by the Law of the United States in a case where the
congress of the United States have a clear and
admitted right to legislate and declare the
punishment If this is true it must
also be true that if the conviction

takes place first in the Federal court then it would be a bar to a prosecution in a State court where the State law makes the same act an offence against the State Let us test the principle by the case at bar In this case the punishment is not the same although the act to be punished is the same by both laws To make a former conviction good at common law the cause of the prosecution must be the same in both actions The judgment of law with regard to the degree or quantity of punishment should be the same also now these coincidents are not likely to happen where the offender and the offence are subject to the separate action of two independant Sovereignties, in this case the portion of the respective punishments are alike with regard to the imprisonment in every thing else they are entirely unlike the act of Congress in addition to the penalty of fine and imprisonment imposes the felony disqualification of rendering incapacity to be a Witness &c How much or how many of these items could be holden to be an equivalent for the discrepancy between the fine imposed by the act of Congress of not exceeding ten thousand dollars & that imposed by our act of a fine not exceeding $1000 — It appears to me the bare statement of the case is sufficient to shew that no plea in bar would be sufficient to protect the citizen against the exercise imposition of a double punishment In this case the United States having a clear right to endure the punishment

have declared it sufficient to impose fine and im-
prisonment But the state have not been content
with that punishment But have added other
heavy penalties If the State can do this Why not im-
pose till other and further penalties extending
to death - But suppose in this case the prisoner had
been first indicted in the US court found guil-
ty & had Judgment & execution upon him
Then he is again indicted in the State court he
pleads the former conviction When shall our court
stop shall we only look at the act which consti-
tutes the offence and stop there or shall we add to
the sentence of that court all superadded by our
act I see no difference in this case and the case
of the power granted to congress to define the pun-
ishment for treason In that case the constitution
does not prohibit the States from declaring what
shall be the punishment for treason against
the US. as the law of the United States now stands
the punishment for treason is death Sup-
pose the State should enact that if any person
shall levy war against the US. & he shall be
deemed guilty of treason against the State and
shall be imprisoned one day and pay ten
dollars If a person should then levy war
against the United States should he convicted
or acquitted by the State courts If this thing
of pleading a former conviction in the
case of counterfeiting is to be allowed
Why not allow it in this last case But

If it is allowed is not obvious that a State opposed to the measures of Union in War may effectually defeat the most righteous measures of the government What could have prevented a portion of the eastern States during the last war from paralyzing the arm of the federal government by this sort of legislation Suppose again a State should be desirous to admit foreign goods free of duty now if the bar to be pleaded goes to the Identical act prohibited by both governments Then this consequence would follow the United States prohibited Smuggling & allow the punishment to be forfeiture of the goods & fine the State forbids the act of smuggling also But declares the punishment to be a fine of one dollar for each offence without forfeiture How completely this would be an evasion of the revenue laws if ~~thus~~ a conviction or an acquittal under this State law would be a bar to a prosecution under the law of the United States I put this case under the impression that a State is no where prohibited expressly from inhibiting foreign goods into their ports Though they cannot lay duties nor imports

I will now again recur to the case of Treason by the Constitution of the U S

The president of the Union has power to par-
don offences against the United States now
if it is true that the case of counterfeiting
and that of treason can be concurrently
acted on by both governments Then
a pardon by the State of a State governor would
be a bar to a future prosecution Whether
the pardon was granted before or after
conviction & so on the other hand
a pardon by the president
by the President would divest the
State of its jurisdiction unless indeed
we are prepared to admit the delin-
quent may lawfully be punished
twice I assume it as a postulate that
if the State has power to punish the
governor has power to pardon
The provision in our constitution
with regard to the pardoning power
is just like the power given to the
President—

It is furthermore my Opinion that congress ought
not to exercise any powers which are not clearly granted
—ed to them as principal or incidental powers and
in all cases where it is doubtful in their minds
whether a power is so given they should forbear
the exercise thereof But that with regard to
powers thus granted they are bound to exercise
them when expediency requires it to be done
And that with regard to the States I think they

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(12.)

they never should exercise a power clearly granted to the general government when incompatibly exercised by the general government as in the present case although the general government should have failed to exercise the exercise thereof. It dont follow that because the congress have neglected to occupy the power that it may be usurped as a way or thing lost & that the States can use & keep it till congress shall demand it. &c. upon the whole of the premises I conclude that the power to punish the counterfeiting the current coin is expressly by words given to congress and that by reason of repugnancy to the exercise of that power by the States it is exclusive and that therefore the 43 sect of the act of the general assembly is void.

My opinion differs from that of the court. An indictment for a common law offence must describe it in such terms as are aptly used to define the offence; - but in an indictment for a statute offence, it is sufficient to charge it in the language of the statute. If when so charged the indictment be bad, it will be because the statute is too vague & uncertain; and in such case, no formal words in the indictment will aid the statute. The indictment in this case is founded on the 43d Sec. of the act concerning crimes & punishments. The offence it seeks to punish is created by the statute & is described in the language of the statute. The indictment I think is therefore in this particular good enough. The legislature might well conclude that the current coin would never be counterfeited without some fraudulent intent: - whereas the counterfeit coin might be often passed by individuals not knowing it to be counterfeit or intending to defraud. The knowledge & fraudulent intent should therefore be charged in an indictment for passing, but need not in an indictment for counterfeiting. Such I think is the true construction of the statute, as to this point. I think too, that the legislature intended to punish & prevent the counterfeiting of such coins as constitute the circulating medium of the country; and not such only, as are made or declared current by act of Congress. Current coin is one thing — current money another & very different thing. The coin most current in this country, and of which the counterfeiting would be most injurious to the community, is not money or coin made current by act of Congress. —

The constitutional question which has been raised, is full of interest & difficulty, and deserves much more labour & research than I have been able to bestow upon it. Without therefore attempting to enter minutely into the argument ~~of counsel~~ I shall content myself with a concise statement of the principles I maintain & the views I have taken, and upon which I hold that the state may constitutionally provide for & punish the counterfeiting of the current coin. - All power belonged originally to the

states or to the people. The United States derive their power from the constitution, and like a chartered company can exercise such powers only as are expressly given or are clearly incident to those which are so given. Where it can be reasonably doubted whether a power has been granted or not it may be safely affirmed that it has not been granted. The powers not granted, are expressly reserved to the states respectively or to the people, as residuums of original sovereignty not parted with or surrendered. Where powers had been called into action by the states, prior to the formation of the constitution which were not wholly parted with, the residuums belong to the states: the residuums of such as remained dormant at that period, abide still with the people. That the states retain the power of legislating concurrently with congress on all subjects over which they have not granted or surrendered to congress an exclusive jurisdiction, or from which, they have not expressly excluded themselves or which in their nature do not belong to or originate with the General Government. And here let me remark that in the view I take of the subject it matters not whether the constitution be regarded as a grant of powers from the states or more properly from the people. The contrary doctrine, will leave the General Government (as it seems to me) without check or restraint, to provide for the general welfare, as in its wisdom may seem needful & proper- will convert the recipient into the fountain of power & make the Attorney or Agent, superior to the constituent or principal. The power of punishing the counterfeiting of the current coin, belonged originally to the states & has been exercised in legislation prior to the formation of the constitution. How then I will ask has it been parted with? It is not pretended that the grant of this power to congress is in its terms exclusive, or that there is any express prohibition to the exercise of it by the states:- but it is argued, that the power to punish the counterfeiting of the coin must from the very nature of the subject & the character of the power belong to & be exercised exclusively by congress. That without any express grant, it would belong to congress as incident to the power to coin money & regulate the value thereof.

that the value of the current coin can only be regulated & preserved by providing a uniform punishment for those who counterfeit & impair its value. — That the State by its legislation on the subject might counteract & thwart the views & policy of the General Government. — That Congress having legislated on the subject no act of the state legislature can exist & have effect, consistently with the act of Congress: — for if both laws correspond, then the state law is idle & inoperative, and if they differ, the act of Congress being superior repeals the state law. That two distinct wills cannot be exercised over the same subject at the same time without coming into collision &c. The force of this argument is not perceived, or if rightly understood, is not admitted. The same thing might be said of the exercise of concurrent jurisdiction in every case. And yet this is expressly provided for & frequently exists in many cases. We are not to argue from the possible abuse against the use of power. This would put an end to all government, inasmuch as the best may be abused or badly administered. — The states are just as much interested in the currency now, as they were before the formation of the constitution — Though it may be conceded that Congress could more conveniently & efficiently regulate its value so far as it may depend upon providing uniform & suitable punishments for counterfeiting. It is not however a question of convenience or fitness, but of right, and it may well be, that it was deemed better for the states to retain in their own hands the inconvenient exercise of this power concurrently with Congress, rather than to surrender it to the general Government who might not exert it efficiently. Be that as it may, the power has not been inhibited to the states, but on the contrary, by strong implication, has been purposely left with them. The 8th sec of the 1st Art. of the constitution of the U. S. enumerates the powers granted to Congress, & the 10th sec. of the same Art. enumerates the powers withdrawn from the States. The power to coin money & to provide for the punishment of counterfeiting are expressly granted, whilst only the power to coin has been withdrawn. If it had been intended to withdraw from the states the power

to punish counterfeiting, is it fair to insist, that it would have been ~~enumerated~~ mentioned along with the power to coin. If it be true that the subject belongs exclusively to Congress, whether they have legislated on it or not, the States would have no right to touch it. It is just as important that they should have the power to punish the counterfeiting of other coins in use & circulation in the community, as of those made current money by express legislation, for the value of each being relative to impair the value of one, would of necessity, impair the value of another. It is not perceived that the objections urged in this case, against the exercise of concurrent jurisdiction by the States, are entitled to much weight, or that the difficulties apprehended are likely to arise. When once a subject has been passed upon by a competent power, that decision should be final, or subject to review & correction by the power only by whom it was made and in the mode only provided or prescribed by that power or by the state or sovereign under whom that power is exercised. When one competent power has commenced to take jurisdiction it cannot be interfered with or ousted of that jurisdiction, but must be left to decide freely and that decision will bar any other or further prosecution for the same offence by the same or any other power; and may be so pleaded. This is in accordance with the provision of the constitution "that no person for the same offence shall be twice put in jeopardy of life or limb. Such is the law of nations in reference to matters over which each nation has an equal right to adjudicate; and such is the law in seperate states, where concurrent jurisdiction is given to different tribunals of the same state. For as much therefore, as neither the power nor the occasions for its exercise can be said to have originated with the Genl. Government or can be claimed as peculiarly appropriate to it; and ~~that~~ as the power has not been granted exclusively to Congress, nor expressly withdrawn from the States; I hold that it may be rightfully exercised by the States.

R Wash

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