## QUAY MUST FACE A JURY

Judge Finletter Overrules the Demurrers.

He Says the Demurrers Practically Admit the Charges as Contained in the Indictment.

### JUDGE FINLETTER'S OPINION

He Scores the Defendants For Their Attempt to Delay Matters-Text of the Decision Overruling the Demurrers and the Motion to Quash in the Conspiracy Indictments.

The full text of Judge Finletter's de-

The full text of Judge Finletter's decision disposing of the first objections to the indictments in the famous conspiracy case follows:

All of the questions raised by these demurrers and the motion to quash could have been as fully raised upon motion in arrest of judgment after a virial ways the medits. Such motions trial upon the merits. Such motions serve no good purpose. They prolong the anxieties of the innocent, and they trial upon the merits. Such motions serve no good purpose. They prolong the anxieties of the innocent, and they permit no guilty man to escape. They do not prevent the commonwealth from submitting other bills free of the errors complained about. Their only effect is to postpone and delay a final disposition of a case. While the right of defendants to use these methods of obstruction and delay may not be duestioned, they are regarded by the court with disfavor. The commonwealth—the people—has a right, especially in communities like this, to the speedy determination of criminal cases, and the speedy punishment of criminals. The public good requires it, and the interests of the innocent defendant demand it. It is necessary for the protection of the individual citizen, in his life, his person, and his property. In considering legal questions we should never lose sight of the point at issue. There seems to be an idea that upon a demurrer all possible questions can be raised. This is a mistale. A demurrer raises only the question. "Do the charges and facts set out in the indictment constitute a violation of law." All other questions must be raised at the trial, or upon a motion for a new trial, or upon a motion for a case the nature and character of such objections when he says: "The counts before us are so uncertain and bald in circumstances as to shed scarcely a ray of light on the charge which the infendants were required to meet." He does not intimate that this objection could have been raised upon demurrer.

LAW AS TO BANK CASHIERS.

Bills Nos. 228 and 329 may be considered together. Bill No. 229 charges that the defendant, Matthew Stanley Quay, conspired with John S. Hopkins, the cashier of the People's bank, "to buy and sell stocks through the said John S. Hopkins." Bill No. 228 charges a conspiracy "to use money, the property of the People's bank." The acts of assembly applicable to these indictments are as follows: "Cashiers of banks engaging in other business." Act II. March, 1860, section 64, Pennsylvania laws, 399: "If any cashier of any bank of this commonwealth shall engage directly or indirectly in the purchase or sale of stock, or in any other profession, occupation or calling, other than that of his duty as cashier, he shall be suilty of a misdemeanor, and, being thereof convicted, shall be sentenced to pay a fine of not exceeding \$500."

"Cashiers of banks not to engage in any other occupation."

"Act 16, April, 1850, section 10, Pennsylvania laws, 482: It shall not be lawful for the cashier of any bank to engage in any other profession, occupation, or calling, either directly or indirectly, than that of the duties appertaining to the office of cashier, and if any cashier of a bank shall, directly or indirectly, engage in the purchase and sale of stocks, or in any other pro-LAW AS TO BANK CASHIERS.

if any cashier of a bank shall, directly or indirectly, engage in the purchase and sale of stocks, or in any other profession, occupation, or calling, other enant that of his duties of cashier, such cashier, upon conviction thereof in any court of criminal jurisdiction, shall be sentenced to pay a fine not exceeding \$500; provided, that this section shall not be construed in such manner as to prevent any cashier from managing bis own real estate or private property as heretofore, if such private property be not vested in mercantile, mechanical or manufacturing operations." manufacturing operations

DEMURRERS ADMIT THE FACTS. The demurrers admit all the facts set forth in the indictments—that the People's bank was a bank; that Hopkins was its cashier; that the defendant and Hopkins agreed together that Hopkins should deal in stocks for the defendant's benefit; that they should use the money of the bank for that purpose. In addition to this the printed and oral arguments of the defendant's counsel aver "that John S. Hopkins was the cashier of the People's bank said forth in the indictments-that the Peo-

the cashier of the People's bank, said bank being a bank of discount and de-

the cashier of the People's bank, said bank being a bank of discount and deposit; that it does not appear in said indictments that it was unlawful for the said M. S. Quay to borrow money from said People's bank."

It would seem to be conclusive that these admissions and averments establish that the defendant and John S. Hopkins had conspired as charged in the bills of indictment, and that it would be wiser for me to rest my decision upon them than to attempt to fortify it by reason or arguments. But a due-regard for the rights of the defendants would seem to require that I should consider the objections and arguments of their counsel.

It must be conceded that the acts of 1850 and 1860 make it a crime for a cashier of any bank to directly engage in the purchase and sale of stock. It is argued that these acts apply under the decision to banks of issue only. There is no such limitation in the acts themselves, which forbid the cashier of "any bank" to do the acts complained of, and it is sufficient to plead in the words of the act. If the decisions limit the statute to banks of issue, the question whether or not the People's bank is a bank of issue can be raised at the trial. It is a question of evidence, not of pleading.

HOPKINS NOT THE CUSTODIAN. It is undeubtedly true, as argued by It must be conceded that the acts of 1850 and 1860 make it a crime for a cashier of any bank to directly or indirectly engage in the purchase and sale of stock. It is argued that these acts apply under the decision to banks of issue only. There is no such limitation in the acts themselves, which forbid the cashier of "any bank" to do the acts complained of, and it is sufficient to plead in the words of the act. If the decisions limit the statute to banks of issue, the question whether or not the People's bank is a bank of issue can be raised at the trial. It is a question of evidence, not of pleading.

HOPKINS NOT THE CUSTODIAN.

It is undeubtedly true, as argued by

counsel, that Mr. Quay had a right to borrow money from the People's bank, but the conspiracy charged is "to use unlawfully money the property of the People's bank for the gain, benefit and advantage of the said Matthew S.

advantage of the said Matthew S. Quay."

It no where appears in the record or in the demurrer or in the argument that Mr. Hopkins had the legal custody of the money, nor does it appear that Mr. Quay knew or had reason to believe that Hopkins had the legal custody of the money. It is charged in the indictment that they conspired unlawfully to use the money. Unlawfully is the equivalent of without lawful authority, or without the authority and knowledge of the owner, the People's bank. It was, therefore, a conspiracy to appropriate the property of the bank without its consent; and the bill charges a conspiracy to commit larceny, and is, therefore, sufficient.

This, however, is also a question of evidence for the commonwealth to establish, or the defendant to explain, and show that it was a loan from the ban!:

The bills 330 and 331 are substantially the same, so far as the questions raised.

bank.

The bills 330 and 331 are substantially the same, so far as the questions raised are concerned. They would be as sufficient and not subject to objection if the word "unlawfully" was stricken

GUARDING PUBLIC MONEY.

The acts of assembly under which these bills are founded are as follows: "If any officer of this commonwealth or any cft, borough or township thereof shall loan out with or without interest or return therefor any money or valuable security received by him, or which may be in his possession or under his control by virtue of his office.

which may be in his possession or under his control, by virtue of his office, he shall be guilty of a misdemeanor." Act of March 31, 1860, section 62.
"If any such officer shall enter into any such contract or agreement with any bank, corporation or individual or association of individuals, by which said officer is to derive any benefit, gain or advantage from the deposit in such bank, corporation or individual or

sail officer is to derive any benefitgain or advantage from the deposit in
such bank; corporation or individual or
association, of any money or valuable
security he'd by him or which may
be in his possession or under his control
by virtue of the said office, he shall be
guilty of a misdemeanor." Act of March
21, 1860, section 62.

"If any s'ate, county, township or
municipal officer of this commonwealth,
charged with the collection, safe keening, transfer or disbursement of public
money, shall convert to his own use
in any way whatever, or shall use by
any way whatever, or shall use by
any way whatever, or shall use of
property or merchandise any portion
of the public money entrusted to him
for cellection, safe keeping, transfer
or disbursement, or shall prover a defaulter, or fail to pay over the same
when thereunto legally required by
the state, county or township treasurer,
or other proper officer or person authorized to demand and refeive the same,
every such act shall be deemed and adjudged to be an embezzlement of so
much of the said money as shall be
thus taken, converted, invested, used or
unaccounted for, which is hereby declared a misdemeanor; and every such
officer and every person or persons
whomsoever aiding or abetting or beofficer and every person or persons whomsoever aiding or abetting or being in any way accessory to said act and being thereof convicted, shall be sentenced to an imprisonment ceeding five years." Act of 3 1860, section 65. Act of March 31,

STATE MONEY FOR PRIVATE USE.

The indictments charge that the defendants unlawfully and fa'sely did combine and agree together by malicious means to use, and did use, to make profit, large sums of the public moneys of the commonwealth. The demurrers admit all of these facts to be true, but contend that they violate no law

These are three distinct violations of These are three distinct violations of the law. It is contended by the defendants that when the money was deposited in the People's bank it ceased to be public money, and therefore there could be no conspiracy to use public money. If it be conceded that it ceased to be public money it is not apparent how this can make the indictment defective or make the acts of the defendance. fective, or make the acts of the defend-ants lawful which before were unlaw-

ants lawful which before were unlawful and a criminal conspiracy.

A conspiracy to steal or appropriate or to use for private gain the public money is fruitless so long as it is in the treasury, or so long as it is under the control of the treasurer. Its removal from the treasurer and con'rol of the treasurer is necessary for the success of the conspiracy. The depositing of the money in a bank as a deposit may be the crowning act of the conspiracy, which makes it successful. It may be the means by which the crime was committed, the means by which the public money was used for

crime was committed, the means by which the public money was used for private gain, and for purposes not authorized by law.

It is true that as between bank and depositor the property in money deposited passes the bank, and from depositor upon deposits made, but as respects parties to a criminal conspiracy. spects parties to a criminal conspiracy. who use the lawful transaction of a deposit as a means to crime, their criminal intent will follow the money de-

inal intent will follow the money deposited and their fraud taint an other wise lawful act. Besides, the conspiracy may be complete while the money is in the treasury, and its transfer by deposit can then have no effect to legalize the conspiracy.

It surely will not be seriously contended that if the treasurer conspires with others to convert to their own use the public money for private gain, and they employ every means to do so, and that every element of a conspiracy is complete up to the time of deposit is complete up to the time of depos in a bank, that the deposit annihilate

in a bank, that the deposit annihilates the conspiracy and makes the unlawful acts lawful and prevents the punishment of a completed successful conspiracy.

Bill 331 charges a conspiracy with the various treasurers since 1888. It, however, also charges a conspiracy with Treasurer Haywood, and is, therefore, good as against him and the other degreed as against him and the other degree as a constitution of the constitution

not so in executed conspiracies, where the unlawful act complained of is in the end accomplished by the confed-erates and the unlawfulness of the means is not questioned.

Where the acts complained of are the unlawful object of the conspiracy, and have been accomplished, it is sufficient to plead them as accomplished.

to plead them as accomplished

HAYWOOD BILL SUSTAINED. HAYWOOD BILL SUSTAINED.

A motion to quash bill No. 332 has been made, but it has not been seriously argued, and no substantial reason has been given to sustain the motion. The bill meets all the requirements laid down by Judge Bregy, and it is in accordance with the practice of this court from time immemorial.

Judge Alison simply announced what was the practice and law and what they had always been when he said:

"The returns in the case of Morton et al. charge conspiracy and state the

charge conspiracy and state the ert acts committed in pursuance of the conspiracy; these overt acts are in themselves crimes for which one may be indicted, such as embezzlement. may be indicted, such as embezziement, fraudulently making and uttering written instruments, etc. In a bill charging conspiracy alone these might have been set out in separate counts, as the overt acts of the defendants in the execution of a conspiracy, and if they could be pleaded in that form they may be separately made the subject of distinct bills of indictment."

The motion to quash is denied. The demurrers are overruled, with leave to

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