

U. S. Rep.]

COMMONWEALTH V. PHIPPS.

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is the offence less forgery because it is not, *eo nomine*, so designated? In common understanding, to forge is to counterfeit, to falsify, to feign, to fabricate. As illustrated by Worcester, it is "to forge a note or signature." The common law definition of forgery is a fraudulent making or alteration of writing, to the prejudice of another man's right, or the false making of an instrument, which purports on its face to be good and valid for the purpose for which it was created, with a design to defraud any person or persons. In 3 Greenleaf's Evidence, sec. 103, to the former definitions is added the remark, "that forgery may be committed of any writing, which, if genuine, would operate as the foundation of another man's liability, or the evidence of his right." Now, tested by this standard, what element of the common law definition of forgery is wanting in the 169th section of the Act of March 31st, 1860, when it makes it an indictable offence to fraudulently make, sign, alter, utter, or publish any written instrument other than those which are recited in this section to the prejudice of another's right, with intent to defraud any person or body corporate? This, in fact, it will be seen to be, very slightly, more or less, than reciting the text of Blackstone's definition of forgery, as he lays it down in his Commentaries, 4 Black. 347. What difference, therefore, can it make that the law making power of the Commonwealth when legislating on this description of crimes, holds the language, if any one with fraudulent purpose shall *make* any false instrument, instead of saying if any one shall *forge* such an instrument, connecting as they do with such making, every essential element of the common law crime of forgery? In the four sections of the Act of 1880 before cited, in two of which the word *forge* is found, and in two of which it is omitted, the words to make and to forge are convertible terms, having the same meaning. They all relate to making false writings or stamps. It is not possible to forge in the sense in which the word is here used without a fraudulent making of a written instrument, and to fraudulently make an instrument such as is described in the 169th section of the Act, implies the necessity of forging such a paper. It is not the name alone which determines the character of the offence, to what class of crime it belongs, or what in substance and in fact it is. We look rather to the framework or structure of the

crime as the Legislature has constituted it, and to its essential characteristics, in order to ascertain what it is. Subjected to the most critical examination, it will be found that the offence set forth in the 169th section is forgery, pure and simple, as the common law has defined it. It follows from this that the offence contemplated by the 169th section of the Criminal Procedure Act may be laid in an indictment as a fraudulent making of a written instrument, with fraudulent purpose under the statute, or it may take the form of an indictment for forgery, as at common law, and whatever be the form of the indictment the crime is as much forgery in one case as in the other. This has practically been decided by our Supreme Court, in the case of the *Commonwealth v. Luberg*, 13 Norris, 85. The indictment was under the Act now before us for consideration for making fraudulent entries in the books, reports and statements of a National bank, with intent to defraud the bank; Judge Paxson, delivering the opinion of the court, says, the indictment charges an offence which was a crime at common law. It is plain the plaintiff in error could have been indicted for forgery. The indictment here is laid under the statute, and does not charge the offence of forgery in the technical manner required by the strict rules of the common law. That the Act of Assembly does not call it forgery makes no difference. It is the same offence. In the case of the *Commonwealth v. Beamish*, 31 P. F. S. 389, the same principle was recognized. The indictment was held to be good under the statute, though not sustainable, as it was framed at common law, because neither copy nor purport of the whole, nor the part of the instrument of writing altered, was set forth or described.

The averment in the indictment was the fraudulent alteration of a book and writing commonly known as the duplicate of taxes levied for the use of the school district. Here the entire instrument of writing is copied into the indictment, which is thus shown to be a receipt perfectly intelligible on inspection, which requires no averment of extrinsic facts to make it appear that it is of a character calculated to work an injury to the person whose rights it is charged have been prejudiced by the defendant's alleged fraudulent signing of their names. It cannot, we think, be successfully maintained that each count of the indictment does not give to the de-