WOOD v. OWINGS.

The queſtion now made to the court is, whether the act of the legiſlature of Maryland has annexed other requiſites to an inſtrument of writing conveying lands, without the performance of which, not only the paſſing of the eſtate, intended to be conveyed, is arreſted, but the inſtrument itſelf, is prevented from becoming the deed of the perſon who has executed it.

Upon the moſt mature conſideration of the ſubject, the opinion of the court is, that the words, uſed in the act of Maryland, which have been recited, conſider the inſtrument as a deed, although inoperative 'till acknowledged and enrolled.

The words do not apply to the inſtrument, but to the eſtate that inſtrument is intended to convey.

Since then the bankrupt law of the United States does not affect deeds made prior to the 1ſt of June, 1800, and this deed was made on the 30th of May, 1800, the court is of opinion, that the rights, veſted by the deed, (whatever they might be) are not diveſted in favor of the aſſignees of the bankrupt, and therefore, that they ought not to have recovered in this caſe.

Judgment reverſed—and judgment of *non pros* to be entered.

UNITED STATES *v.* SIMMS.

U. STATES v. SIMMS.

ERROR from the circuit court of the diſtrict of Columbia, ſitting at Alexandria, to reverſe a judgment rendered by that court for the defendant, on an indictment for ſuffering a faro bank to be played in his houſe, contrary to an act of aſſembly of Virginia.

The acts of congreſs of 27th Feb. and 3d of March, 1801, concerning the diſtrict of Columbia, have not changed

The indictment ſets forth that Simms, "on the 1ſt "April, 1801, with force and arms, at the county of "Alexandria, did ſuffer the game called the faro bank to

" be played, by divers perſons, in a houſe of which he, " the ſaid Jeſſe Simms, then and there, at the time of the " ſaid play, had the poſſeſſion and uſe, contrary to the " form of the ſtatute in that caſe lately made and pro- " vided, and againſt the peace and government of the " United States."

The record which came up contains a bill of exceptions, taken by the attorney for the United States, to the opinion of the court; which opinion was, " that the pro- " ceeding by indictment to recover the penalty impoſed " by law for the offence ſtated in the indictment in this " caſe filed, was improper, illegal, and could not be ſuſ- " tained."

The act of aſſembly of Virginia, *January* 19, 1798, *p.* 4. *ch.* 2. §. 3. upon which the indictment was founded, is in theſe words, " Any perſon whatſoever, who ſhall ſuf- " fer the game of billiards, or any of the games played at " the tables commonly called the A. B. C.—E. O. or faro " bank, or any other gaming table, or bank of the ſame " or the like kind, under any denomination whatever, to " be played in his or her houſe, or in a houſe of which " he or ſhe hath at the time the uſe or poſſeſſion, ſhall, " for every ſuch offence, forfeit and pay the ſum of one " hundred and fifty dollars, to be recovered in any court " of record, *by any perſon who will ſue for the ſame.*"

" §. 8. The preſiding juſtice, as well in the diſtrict as " in all the inferior courts of law in this commonwealth, " ſhall conſtantly give this act in charge to the grand ju- " ries of their courts, at the times when ſuch grand juries " ſhall be ſworn."

Maſon, attorney for the United States.

The only queſtion is whether an indictment was the proper proceſs.

This depends upon the act of aſſembly of Virginia of the 19th of January, 1798, and the acts of congreſs reſpecting the diſtrict of Columbia.

By the act of congreſs, 27 *February*, 1801, *vol.* 5. *p.* 268. *ch.* 86. §. 1. it is enacted that the laws of Virginia ſhall

the laws of Maryland and Virginia, adopted by congreſs as the laws of that diſtrict, any further than the change of juriſdiction rendered a change of laws neceſſary. Fines, forfeitures, and penalties, ariſing from a breach of thoſe laws are to be ſued for and recovered in the ſame manner as before the change of juriſdiction, *mutatis mutandis.*

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be and continue in force in that part of the diſtrict which was ceded by Virginia. And by the act of congreſs of 3*d March*, 1801, *p.* 287. §. 2. ſupplementary to the act of 27th February, it is enacted, " that all indictments " ſhall run in the name of the United States, and con- " clude againſt the peace and government thereof; and " all fines, penalties and forfeitures accruing under the " laws of the ſtates of Maryland and Virginia, which " by adoption have become the laws of this diſtrict, ſhall " be recovered with coſts, by indictment or information in " the name of the United States, or by action of debt in " the name of the United States and of the informer; " one-half of which fine ſhall accrue to the United States, " and the other half to the informer; and the ſaid fines " ſhall be collected by, or paid to the marſhal, and one- " half thereof ſhall be by him paid over to the board of " commiſſioners herein after eſtabliſhed, and the other " half to the informer."

By the act of Virginia the penalty is to be recovered by *any perſon who will ſue for the ſame.* If the queſtion had depended upon this act alone, it would not have been brought before this court. But the act of congreſs has changed the mode of recovery, and made an indictment neceſſary.

C. Lee, for defendant.

" When a ſtatute appoints a penalty for the doing of a " thing which was no offence before, and appoints how " it ſhall be recovered, it ſhall be puniſhed by that means, " and not by indictment." *Cro. Jac.* 643. *Caſtles caſe*, and 2. *Burrow*, 803, *Rex v. Robinſon.*

The ſtatute of Virginia contains in itſelf, the mode of proſecution; and it being ſuch (to wit, an action of debt by an informer,) as could not be affected by the transfer of juriſdiction, and the ſtatute being adopted by congreſs *in toto*, there is no neceſſity of reſorting to another mode. The ſupplementary act of congreſs of the 3d of March 1801 was intended to operate upon thoſe caſes under the laws of Virginia, where it had been neceſſary to uſe the name of the commonwealth in the recovery of fines, forfeitures and penalties, and can not be ſuppoſed to intend

to take away a private right, or to alter the mode of profecution, unleſs ſome alteration had become neceſſary, in conſequence of the change of government. That act muſt be conſtrued, *reddenda ſingula ſingulis*; that is, where the mode of proſecution under the ſtate laws was by indictment, or information in the name of the commonwealth, it ſhould, in future, be by indictment, or information in the name of the United States; and where, by the ſtate laws, the mode of proſecution was an action *qui tam*, or an action of debt in the name of the informer, it ſhould, in future, be an action *qui tam* in the name of the United States and of the informer, or an action of debt in the name of the informer alone.

Maſon, in reply.

The legiſlature of Virginia certainly had the right and power to alter the mode of recovering the penalty, if they thought proper; ſo had congreſs as ſoon as the juriſdiction devolved upon them. The words of the act of congreſs are ſufficiently broad to take in this caſe. The act ſays, all fines, penalties and forfeitures *ſhall* be recovered by indictment, or information in the name of the United States, or by action of debt in the name of the United States, and of the informer; that is, where the penalty is to be recovered without the intervention of an informer, there it ſhall be by indictment or information in the name of the United States; but where an informer appears and claims the penalty, there it ſhall be a *qui tam* action of debt; and half the penalty is to go to the United States, and half only to the informer. In this caſe there was no informer who claimed the penalty. The preſentment was made by the grand jury.

Congreſs did not mean ſimply to render *ſingula ſingulis*. It was found that the criminal code of Virginia could not be carried into effect in this diſtrict for want of a penetentiary houſe. Congreſs therefore took up the criminal ſyſtem and reviſed it. They have pointed out both the mode of proſecution and the appropriation of the penalty. They have allowed an informer to come in, in all caſes, and claim half of the penalty; and where, by the ſtate laws, the whole went to the informer, they have declared that half ſhall go to the United States.

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Feb. 23d. *The Chief Juſtice* delivered the opinion of the court.

This is a writ of error to a judgment of the circuit court of the diſtrict of Columbia, ſitting in the county of Alexandria, in the following caſe.

By an act of the legiſlature of Virginia a penalty of £.150 is impoſed on any perſon who permits certain games, enumerated in the act, to be played in a houſe of which he is the proprietor. The penalty, by that act, is given to any perſon who will ſue for the ſame.

After the paſſage of this act, congreſs aſſumed the government of the diſtrict, and declared the laws of Maryland to *remain* in force in that part of the diſtrict which had been ceded by Maryland; and the laws of Virginia to remain in force in that part of the diſtrict which had been ceded by Virginia.

Subſequent to the act of aſſumption an act paſſed, ſupplementary to the act entitled "An act concerning the diſtrict of Columbia;" the ſecond ſection of which is in theſe words: (here the chief juſtice read the whole ſection, and the ſubſtance of the indictment.)

It is admitted that, under the laws of Virginia, an indictment for this penalty could not be ſuſtained; but it is contended that the clauſe in the ſupplemental act which has been recited, makes a new appropriation of the penalty, and gives a new remedy for its recovery.

It is inſiſted that the words "all fines, penalties and "forfeitures accruing under the laws of Maryland and "Virginia," &c. neceſſarily include this penalty, and by giving a recovery in the name of the United States by indictment, appropriate the penalty to the public treaſury. On the part of the defendant in error it is contended that the words relied on do not change the law, further than to ſubſtitute in all actions heretofore carried on in the names of the ſtates of Maryland and Virginia reſpectively, the name of the United States inſtead of thoſe names; and that the proviſions of the act apply only to

fines, penalties and forfeitures accruing to the government. U. STATES v. SIMMS.

This ſubject will perhaps receive ſome elucidation from a review of the two acts of congreſs relative to the diſtrict of Columbia.

The firſt ſection of the firſt act, declaring that the laws of the two ſtates reſpectively ſhould remain in force in the parts of the territory ceded by each, was perhaps only declaratory of a principle which would have been in full operation without ſuch declaration; yet it manifeſts very clearly an intention in congreſs not to take up the ſubject of a review of the laws of the diſtrict at that time, but to leave things as they then were, only adapting the exiſting laws to the new ſituation of the people.

Every remaining ſection of the act to the 16th, is employed on ſubjects where the mere change of government required the intervention of the general legiſlature.

The ſixteenth ſection continues ſtill to manifeſt a ſolicitude for the preſervation of the exiſting ſtate of things, ſo far as was compatible with the change of government, by declaring that nothing contained in the act ſhould be conſtrued to affect rights granted by or derived from the acts of incorporation of Alexandria and Georgetown, or of any body politic or corporate within the ſaid diſtrict, except ſo far as relates to their judicial powers.

This act had given to the circuit court, which it eſtabliſhed, cognizance of all crimes committed in the diſtrict, and of all penalties and forfeitures accruing under the laws of the United States.

It was ſoon perceived that the criminal juriſdiction of the court could not be exerciſed in one part of the diſtrict, becauſe by the laws of Virginia, perſons guilty of any offence, leſs than murder in the firſt degree, were only puniſhable in the penitentiary houſe, erected in the city of Richmond, which puniſhment the court of Columbia could not inflict.

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It was also perceived that some embarrasment would arise respecting the style in which suits, theretofore directed to be brought in the names of Maryland and Virginia, should thenceforth be prosecuted. The respective laws authorizing them, and which were considered as having been re-enacted by congress, *totidem verbis*, directed such suits to be prosecuted in the names of Maryland and Virginia, respectively. The continuance of this style in the courts of the United States was glaringly improper, and it was thought necessary to change it by express provision. These objects rendered the supplemental act necessary, which provides, that the criminal law of Virginia, as it existed before the establishment of a penitentiary system, should continue in force, and that all indictments shall run in the name of the United States; and all fines, penalties, and forfeitures, accruing under the laws of the states of Maryland and Virginia, shall be recovered with costs, &c.

The residue of this supplemental act changes nothing, and only supplies provisions, required by the revolution in government, and which had been omitted in the original act.

This view of the two acts would furnish strong reasons for supposing the object of congress to have been, not to change, in any respect, the existing laws, further than the new situation of the district rendered indispensibly necessary; and that the fines, penalties, and forfeitures alluded to in the act, are those only which accrued by law, in the whole or in part, to government; and for the recovery of which the remedy was by indictment or information, in the name of the state in which the court sat, or by a *qui tam* action in which the name of the state was to be used. It can not be presumed that congress could have intended to use the words in the unlimited sense contended for.

By the laws of Virginia, an officer is liable to a heavy fine for not returning an execution which came to his hands to be served, or for retaining in his hands money levied on such execution. This goes to the party injured, and on his motion the judgment for the fine is to be rendered. It would be going a great way to construe this act

of congreſs as making ſuch a fine recoverable for the uſe of the United States; and yet, this would be the conſequence of conſtruing it to extend to fines and penalties accruing by law, not to government, but to individuals.

If a penalty recoverable by any individual, by action of debt, was to be conſidered as deſigned to be embraced by the ſecond ſection of the ſupplemental act, ſtill an action of debt in the name of the United States and of the informer, would ſeem to be the remedy given by the act.

The principle, *reddenda ſingula ſingulis*, would be applicable; and it would ſeem to the court more proper to ſuppoſe the *qui tam* action, given in this caſe, to be the remedy, than an indictment.

The court therefore is of opinion that there is no error in the judgment, and that it be affirmed.*

FENWICK *v.* SEARS'S ADMINISTRATORS.

ERROR from the judgment of the circuit court of the diſtrict of Columbia, ſitting at Waſhington, in an action on the caſe on a foreign bill of exchange, by the adminiſtrators of the indorſee againſt the indorſer.

An adminiſtrator, having had letters of adminiſtration in Maryland before the ſeparation of the diſtrict of Columbia from the original ſtates, can not, after that ſeparation, maintain an action in that part of the diſtrict ceded by Maryland, by virtue of thoſe letters of adminiſtration; but muſt take out new letters within the diſtrict.

The caſe, as it appears in the pleadings and bills of exceptions, was as follows:

Francis Lewis Taney, at Paris, in France, drew the following bill of exchange: "Paris, 5th Auguſt, 1797, "Sixty days after ſight of this my ſecond of exchange, "(firſt and third not paid) pay to the order of Mr. Jo-

* The defendant's counſel prayed that the affirmance might be *with coſts*. It was ſuggeſted by ſome of the gentlemen of the bar, that the queſtion of giving coſts againſt the United States would be fully argued in the caſe of the United States v Hoöe, at this term. The court therefore poſtponed the ſubject till that argument ſhould be had. That cauſe however went off upon another ground without any argument on the queſtion of coſts And the court did not give any directions reſpecting the coſts in the preſent caſe.