*The Ship Helen.

United States *v.* The Ship Helen.

Seizures.

A vessel having violated a law of the United States, cannot be seized for such violation, after the law has expired, unless some special provision be made therefor by statute.
The General Pinkney, 5 Cr. 281, re-affirmed.

This was an appeal from the sentence of the District Court of the United States for the district of New Orleans, which dismissed the libel.

The ship Helen, a vessel of the United States, during the existence of the act of congress of the 28th of February 1806, "to suspend the commercial intercourse between the United States and certain ports of the island of St. Domingo," had traded with one of the prohibited ports, contrary to that act. The act was suffered to expire on the 25th of April 1808. Afterwards, to wit, on the 20th of September 1808, she was seized, on account of that violation of the act, by the collector of the port of New Orleans; but the libel was dismissed by the judge, on the ground, that the law had expired. The United States appealed.

The case was now submitted without argument; and upon the authority of the case of *The General Pinkney*, at last term—

The sentence was affirmed.

Stewart *v.* Anderson.

Set-off.

In an action, in Virginia, by the assignee of a negotiable promissory note, against the maker, the latter may set off a negotiable note of the assignor, which he held, at the time of receiving notice of the assignment of his own note, although the note thus set off was not due, at the time of the notice, but became due, before the note upon which the suit was brought.
Stewart *v.* Anderson, 1 Cr. C. C. 586, affirmed.

Error to the Circuit Court for the district of Columbia. Stewart, the indorsee of a promissory note, brought his action of debt, under the statute of Virginia, against Anderson, the maker. The note was made payable to W. Hodgson, and by him assigned to Stewart. It *was dated the [*204
25th of April 1807, and payable 180 days after date, for $330.56.

The defendant pleaded, 1. *Nil debet:* and 2. That at the time the note became due, and before the defendant had notice of the assignment thereof to the plaintiff, by W. Hodgson, the latter became, and then was, indebted to the defendant in the sum of $566.67, by note, dated the 29th of June 1807, and payable 60 days after its date. That the defendant had been, and still was ready and did offer to set off against the money due from him by the note mentioned in the declaration, so much of the $566.67, as would be and was sufficient to discharge all that was due and owing from him for and on account of the note in the declaration mentioned.

Upon the trial in the court below, the jury found a special verdict, which stated, that Hodgson transferred to the plaintiff the note in the declaration mentioned; and afterwards, on the 14th of August 1807, for the first time informed the defendant, that the note was transferred, but did not say to whom. At the time of that information, the defendant held a note of W.

Hodgson, dated the 29th of June 1807, for $566.67, which was given for a full and valuable consideration, and payable 60 days after date. When the defendant was informed of the transfer of the note, he made no reply. The jury finally concluded by saying, that they "find for the defendant, provided the court are of opinion, that the verbal notice given by Hodgson to the defendant, on the 14th of August, of the transfer of the note in the declaration mentioned, was not sufficient to bar the defendant's right of offsetting his aforesaid note of $566.67 against the plaintiff's note in the declaration mentioned. But should the court be of opinion, that the said notice was sufficient to entitle the plaintiff to the money in the declaration mentioned, as against the defendant, then they find for the plaintiff," &c.

*205] *Upon this special verdict, the judgment of the court below was for the defendant; and the plaintiff brought his writ of error.

Youngs, for the plaintiff in error, contended, that the note offered in discount was not a good set-off, because it was not payable at the time the defendant had notice of the assignment. The act of assembly of Virginia (P. P. 36) provides, that "assignments of bonds, bills and promissory notes, and other writings obligatory for payment of money or tobacco, shall be valid; and an assignee of any such may thereupon maintain an action of debt, in his own name, but shall allow all just discounts, not only against himself, but against the assignor, before notice of the assignment was given to the defendant." Under this act of assembly, it must be a just discount, before notice; this could not be a just discount, until it became payable. Money cannot be set off, before it be due. The act of assembly was not intended to embrace commercial cases. If it did, it would destroy the negotiability of notes, and all credit and confidence in mercantile transactions.

The Court stopped *E. J. Lee*, contrà.

Marshall, Ch. J.—If Hodgson's note had not been payable until after Anderson's, it would have been a different case; but being payable before Anderson's, and holden by Anderson, before notice, it is such a set-off as he might avail himself of at the trial.

Judgment affirmed.