

The IRRESISTIBLE : DANIELS, Claimant.

Repeal of penal statutes.

An offence against a temporary statute cannot be punished after the expiration of the act, unless a particular provision be made by law for that purpose.

The proviso in the repealing clause of the neutrality act of the 20th of April 1818, did not authorize a forfeiture, under the act of the 3d of March 1817 (which was included in the repeal), after the time when that act would have expired by its own limitation.

APPEAL from the Circuit Court of Maryland. This cause was submitted without argument.

March 20th, 1822. MARSHALL, Ch. J., delivered the opinion of the court. —*This is an appeal from a sentence of the circuit court of the United States for the district of Maryland, dismissing an information filed [*552 in that court against the brig La Irresistible, as forfeited, under the acts of congress made for the preservation of the neutrality of the United States. The offence charged in the information, was committed under the act of 1817, and the only question is, whether the information can be sustained, after the time when that act would have expired by its own limitation?

The act was to continue in force two years after the 3d of March 1817. On the 20th of April 1818, congress passed an act making further provision on the same subject, which repealed all former acts on that subject, and among these the act of 1817, and annexed to the repealing clause the following proviso, "Provided, nevertheless, that persons having offended against any of the acts aforesaid may be prosecuted, convicted and punished, as if the same were not repealed, and no forfeiture heretofore incurred by a violation of any of the acts aforesaid shall be affected by such repeal." The obvious construction of this clause is, that the power to prosecute, convict and punish offenders against either of the repealed acts, remains as if the repealing act had never been passed. It does not create a power to punish, but preserves that which before existed. Now, it is well settled, that an offence against a temporary act cannot be punished, after the expiration of the act, unless a particular provision be made by law for the purpose.

Sentence affirmed.

*HOLBROOK *et al.* v. UNION BANK OF ALEXANDRIA.

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Banking capital.

The turnpike-road stock, paid in as a part of the capital of the Union Bank of Alexandria, before its incorporation, became the common property of the association, so as to be subject to be sold and distributed among the members, after the charter, which directed, that the capital stock should consist of money only, was accepted; and those who subscribed the road stock, or their assignees, were not entitled to have the same returned specifically to them.

APPEAL from the Circuit Court for the District of Columbia. This was a suit in chancery, instituted in the court below, by Holbrook and

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Alexander, against the Union Bank, to recover from the bank certain shares of road stock, which had been originally subscribed to that bank by them, and to have an account of the profits of that stock, and a payment of whatever should be found to be due to them.

The cause was set down for hearing, upon the bill, answer and exhibits, from which it appeared, that a number of persons formed themselves into an association, for the purpose of carrying on the banking business, for a term of years, in the town of Alexandria, under the name of "The Union Bank of Alexandria." That the association adopted certain articles as the basis of their union; by which articles, it was, among other things, agreed, *554] that the subscribers to the bank *should be permitted to pay one-tenth of their subscription, in the stock of certain incorporated road companies, and the other nine-tenths in money, at certain periods prescribed in the said articles. That in pursuance of these articles, the subscriptions to the bank were filled up, and the stocks of various road companies were subscribed, which stocks were different in their respective values. The articles of association authorized the immediate commencement of the banking business. But they provided for, and contemplated, an application to congress for a charter. The bank commenced its business without a charter, and carried on its business until the year 1817, when an act of congress was obtained, incorporating the bank. This act directed, that the capital stock of the bank should consist of \$500,000, to be paid entirely in money. When this act was passed, a question was raised among the stockholders, whether the road stock was to be returned specifically to the subscribers, or whether it was to be blended together into one general mass, and divided among the subscribers, without regard to the value of the respective stocks. The Little River turnpike stock was the most valuable, at the time it was subscribed, and is now much the most valuable stock; and the plaintiffs, Holbrook and Alexander, having subscribed this stock, insisted, that the same should be specifically returned to them. The court below decided, that they were not entitled to a specific return of this stock, but that it was to be considered the common property of the stockholders, subject to be divided among *555] *them, without regard to the value of their respective stocks; and the cause was brought by appeal to this court.

March 20th, 1822. The cause was argued by *Swann*, for the appellant, and by *Jones*, for the respondent.

March 21st. MARSHALL, Ch. J., delivered the opinion of the court.—The only question is, whether the road stock paid in as part of the capital of the bank, became the common property of the company, so entirely, that it should be sold and distributed among the members, after the charter of incorporation, which directed that the capital should consist of money only, was accepted; or should be returned specifically to those who subscribed it, or to the assignees of their shares?

The articles of association show that this stock constituted originally a part of the capital; that it was received from each stockholder as so much money; that it constituted the subject on which the bank traded. Each share represented an equal part of the whole capital, comprehending each description of road stock, and of the money paid in; and there was nothing

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on the face of the certificate, which was transferrible, indicating that one share was more valuable than another. If, instead of obtaining the act of incorporation, the company had expired or been dissolved by consent, the shares would have been equal, and would have entitled the holders to equal portions of the whole capital. The dividends, during the continuance of the company, must have been *equal. Had the road stock been sold, it must have been carried to the credit of the whole company. [*556]

Upon every view we can take of this subject, the road stock can be considered only as a component part of each share, all individual property in which was lost, on its being transferred to the company. It became consolidated with the other part of the capital, and the charter of incorporation did not produce any change in this respect.

Decree affirmed, with costs.

MARBURY v. BROOKS.

Assignment in trust for creditors.

A debtor has a right to prefer one creditor to another in payment, and his private motives for giving the preference, cannot affect the exercise of the right, if the preferred creditor has done nothing improper to secure it.¹

But any unlawful consideration, moving from the preferred creditor, to induce the preference, will avoid the deed which gives it.

It is not necessary to the validity of such a deed, that the creditors, for whose benefit it is made, should have notice of the execution of the deed, provided they afterwards assent to the provision made for their benefit.²

Nor is it any objection to the validity of the deed, that it was made by the grantor, in the hope and expectation, that it would prevent a prosecution for a felony, connected with his transactions with his creditors; if the favored creditors have done nothing to excite that hope, and the deed was not made with their concurrence, and with a knowledge of the motives which influenced the grantor, or was not afterwards assented to by them, under some express or implied engagement to suppress the prosecution.³

*Nor will it be invalidated by the fact, that the trustee, to whom the conveyance was made, being the father-in-law of the debtor, received the conveyance with a view of concealing the felony, and preventing a prosecution of his son-in-law, provided, it was not executed with the concurrence of the *cestuis que trust*, and a knowledge on their part of the motives which influenced the trustee, or was not afterwards assented to by them, under some engagement to suppress the prosecution. [*557]

ERROR to the Circuit Court for the District of Columbia. This was an attachment sued out by the defendant in error, Brooks, on the 10th February 1820, to attach the lands, tenements, goods, chattels and credits of Fitzhugh, an absconding debtor, pursuant to the act of assembly of Maryland of November 1795, ch. 56; levied in the hands of the plaintiff in error, Marbury, who was duly summoned as garnishee, on the 11th February 1820. The garnishee appeared and pleaded that he had no effects, &c., of the absconding debtor in his hands, upon which an issue was joined and tried by

¹ s. c. 11 Wheat. 78; Pearpoint v. Graham, 4 W. C. C. 232; Lawrence v. Davis, 3 McLean 477; Coolidge v. Curtis, 7 Am. L. Reg. 334; Tompkins v. Wheeler, 16 Pet. 106.

² Brown v. Minturn, 2 Gallis. 557; Wheeler

v. Sumner, 4 Mason 183; Halsey v. Whitney, Id. 206; Bholen v. Cleveland, 5 Id. 174.

³ See Swope v. Jefferson Fire Ins. Co., 93 Penn. St. 251.