court, or before one of the justices thereof, in the county court, or before two justices of the same county where the lands, tenements or hereditaments, conveyed by such deed or conveyance do lie, and be also enrolled, &c., within six months after the date of such deed or conveyance." The 5th section gives the conveyance, so acknowledged and enrolled, relation to the date thereof.

It is a well-established doctrine of the common law, that a deed becomes complete, when sealed and delivered. It then becomes the act of the person who has executed it, and whatever its operation may be, it is his deed. The very act of livery, which puts the paper into the possession of the party for whose benefit it is made, seems to require the construction that it has become a deed.

*252] *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, until 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.

Penal laws of the District of Columbia.

The acts of congress of 27th February and 3d March 1801, concerning the District of Columbia, have not changed 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.[1]

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*.

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.(*a*)

The indictment set forth that Simms, "on the 1st April 1801, with

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(*a*) In the case of United States *v.* More (3 Cr. 159), it was decided, that no writ of error will lie in a criminal case.

[1] United States *v.* Heinegan, 1 Cr. C. C. 50; United States *v.* Ellis, Id. 125; United States *v.* Taylor, 4 Id. 731. And see Rhodes *v.* Bell, 2 How. 397.

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 [*253 possession and use, contrary to the form of the statute in that case lately made and provided, and against the peace and government of the United States." The record which came up contained a bill of exceptions, taken by the attorney for the United States, to the opinion of the court; which opinion was, "that the proceeding 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 sustained."

The act of assembly of Virginia, January 19th, 1798, p. 4, c. 2, § 3, upon which the indictment was founded, is in these words: "Any person whatsoever who shall suffer 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 juries 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 January 1798, and the acts of congress respecting the district of Columbia.

By the act of congress, 27th February 1801 (1 U. S. Stat. 103), § 1, it is enacted, that the laws of Virginia shall *be and continue in [*254 force in that part of the district which was ceded by Virginia. And by the act of congress of 3d March 1801 (Ibid. 115), § 2, supplementary to the act of 27th February, it is enacted, "that all indictments shall run in the name of the United States, and conclude 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 hereinafter 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 on 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 the 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." *Castle's Case*, Cro. Jac. 643; and *Rex* v. *Robinson*, 2 Burr. 803.

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, *255] forfeitures and penalties, and cannot be supposed to intend *to take away a private right, or to alter the mode of prosecution, 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 penitentiary 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.

*256] *February 23d, 1803. 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. Subsequently 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 [*257
*fines, penalties and forfeitures accruing to the government.

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 16th 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, cognisance 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. *It was also perceived, that some em- [*258
barrassments 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 indispensably 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 cannot 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
*259] 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.(*a*)

(*a*) 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 United States *v.* Hooe, at this term. The court, therefore, postponed the subject, until 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.