no learned examination of the doctrine of confusion or mixture of goods to make it apparent that if certain spirits belonging to the government by forfeiture are voluntarily mixed with other spirits belonging to the same party and passed through the process of rectification in leaches, he cannot thereby deprive the government of its property; and if the government only claims its fair proportion of the rectified spirits, he certainly cannot complain of injustice. The only result of applying the doctrine of confusion of goods would be to forfeit the entire mixture. And it cannot be claimed that the process of rectification in leaches effects such a transmutation of species as to destroy the identity of the liquor. If, after the mixture and before the rectification a certain proportion of the spirits belongs to the United States, they will not lose that proportion by the spirits being passed through the leaches for the purpose of rectification.

JUDGMENT AFFIRMED.

BANK v. LANIER.

1. National banks as governed by the National Currency Act of June 3d 1864, which act repeals the National Currency Act of 1863, can make no valid loan or discount on the security of their own stock, unless necessary to prevent loss on a debt previously contracted in good faith.
2. The placing by one bank of its funds on permanent deposit with another bank, is a loan within the spirit of this enactment.
3. Loans by National banks to their stockholders do not give a lien to the bank on the stock of such stockholders.
4. A bank whose certificates of stock declare the stockholder entitled to so many shares of stock, which can be transferred on the books of the corporation, in person or by attorney, when the certificates are surrendered, *but not otherwise*, and which suffers a stockholder to transfer to anybody on the books of the bank his stock, without producing and surrendering the certificates thereof, is liable to a *bonâ fide* transferee for value, of the same stock, who produces the certificates with properly executed power of attorney to transfer; and this is so although no notice have been given to the bank of the latter transfer.

IN error to the Circuit Court for the District of Indiana; the case being thus:

Statement of the case.

The 36th section of the National Currency Act of 1863,* under which the National banks were organized, and which provides for the distribution of the stock into shares, and for its being assignable, contained this restriction, to wit, that no shareholder should have power to sell or assign his shares, so long as he should be liable to the association either as principal, debtor, or surety, or otherwise, for any debt that should have become due, while it remained unpaid.

The 12th section of the National Currency Act of June 3d, 1864, which expressly repealed this act of 1863,† gives to the banks the right, either by laws or in their articles of association, to prescribe the manner in which stock shall be transferable on their books.

The 35th section of the same act of 1864, prohibits "any loan or discount on the security of the shares of a bank's own capital stock;" also the purchasing or holding such shares unless necessary to prevent loss on a debt *previously contracted* in good faith; and directs that stock so purchased or acquired shall be sold or disposed of in six months, in default of which a receiver shall be appointed.‡ And it omits the restriction upon the transfer of shares contained in the above quoted 36th section of the act of 1863.

By the section in the act of 1864, repealing the act of 1863, it is "provided that such repeal shall not affect any act done or proceedings had, or any organization, acts or proceedings of any association organized or in process of organization under the act aforesaid."

The 37th section of the act of 1863, had contained a provision similar to this 35th section of the act of 1864, though its prohibition against the holding, by a bank, of its own stock, was less stringent.§

This act of 1864 being in force, Lanier and Handy brought suit in the court below against the First National Bank of South Bend, to obtain pecuniary satisfaction for the refusal by the bank to permit the transfer of certain shares of stock

* 12 Stat. at Large, 675. † § 62, 13 Id. 118. ‡ Ib. 110. § 12 Id. 676.

on its books to them, on the ground that the law imposed the duty on the corporation to allow the transfer, and raised an implied promise in their favor that the duty should be performed. The case made by their declaration was this:

On the 8th of July, 1865, the bank issued two certificates of stock to one Culver, which declared that he was entitled to 150 shares in the capital stock of the institution, and that these shares were transferable on the books of the bank, in person or by attorney, *only on the surrender of the certificates.* This limitation on the power of transfer was in conformity with the terms of a by-law on the subject. On the 29th of January, 1866, Lanier and Handy purchased 138 shares of this stock from Culver for value, and obtained from him *the stock certificates regularly assigned, with the usual powers of attorney to transfer the stock*, of which transaction the bank was notified on the 31st day of the same month of January. This purchase was not followed up by an immediate request for the transfer of the stock, but in the month of January, 1868, this request was regularly made and refused.

The bank, in justification of its conduct, interposed three pleas in bar, which set up two distinct defences.

The first and third pleas justified the refusal, on the ground that *at the time the stock was taken by Culver* he had pledged it as a security for such deposits as the bank might from time to time make with the house of Culver, Penn & Co., of New York, of which he was a member, and that to make the pledge more effectual, by power of attorney regularly executed, he authorized his attorney in fact to sell and transfer the stock in case the bank conceived it to be necessary, and to apply the proceeds to liquidate any balance due the bank from Culver, Penn & Co., and that 50 shares had actually been sold in pursuance of this agreement, and the proceeds applied before Culver assigned the stock certificates to the plaintiffs, and the remaining shares had been sold before the bank had notice that they were assigned.

The second plea alleged the organization of the bank under the act of 1863, and that being so organized it established certain by-laws for conducting its business and for

its protection, and to regulate the transfers of stock which were in pursuance of the authority vested in the bank by the act of Congress aforesaid, and that the same had been from the time of their adoption, and still were in force, unrepealed and unchanged; that by virtue of the 15th section of these by-laws it was provided that the stock of the bank should be assignable only on its books, *subject to the provisions and restrictions of the act of Congress;* that among the provisions and restrictions of the act was one contained in the 36th section, providing that the stock should be assignable on the books in such manner *as the by-laws of the bank should prescribe*, but that no shareholder should have power to sell or transfer any share so long as he should be liable to the bank for any debt. And the plea averred that the provisions of the said section thirty-six, by the force of the by-laws of the said bank, and by virtue of the said 15th section of them, became and was a part of the by-laws of the bank, and regulated the transfers of the shares of stock held and owned in the same, and was still a part thereof, in full force and unrepealed by any act of the bank. And it averred further that Culver was indebted, &c.

To each of these pleas the plaintiffs filed general demurrers, which, on joinder, were sustained by the court, and the bank declining to answer further, judgment was rendered against her. She now brought the case here on error. The errors complained of being upon the rulings of the court in sustaining the demurrers to these pleas.

Messrs. McDonald and Roache, for the plaintiff in error:

1. It will be contended that the contract set up in the first and third pleas is in violation of the 35th section of the act of 1864, which prohibits any association from making any "loan or discount on the security of the shares of its own stock." Now the object of the prohibition was to compel stockholders to become borrowers on the same terms as other general customers; and inasmuch as the inhibition is limited to "loans and discounts," which must be held to mean those made in the ordinary course of dealing, it can-

not with fairness be extended to such securities as might be taken for deposits in such commercial centres as the bank might find it necessary to make for the purposes of trade and exchange.

2. The second plea presents a question of the right of the bank to hold the stock in question until the assignor had paid or discharged his liabilities to the bank. The bank was organized under the act of 1863, and its by-laws, which have remained unchanged, were formed under the provisions of the last-named act, and with express reference to the restrictions of the 36th section of that act. Now, it is averred in the plea, and we contend that the legal effect of the 15th section of the by-laws was to incorporate into it the provisions and restrictions of the 36th section of the act of 1863, in the same manner as if they had been set out at length in the by-law itself, and that the subsequent repeal of that section by the act of 1864, could not operate to affect the by-law, unless the right to impose such restrictions was taken away by the subsequent act; but so far from that being the case, the 12th section of the act of 1864 expressly confers upon such associations the right, either by by-laws or in their articles of association, to prescribe the manner in which stock shall be transferable on their books. This view of the question is strengthened by reference to the repealing section of the act of 1864.

3. It will be objected that there was no valid pledge to the bank, inasmuch as the certificates of stock were not taken possession of by the pledgee. But the certificates do not constitute the property; they are only muniments of title.

The shares of stock constitute the property; these might be pledged, and the possession, so far as such property is capable of being possessed, remains in the pledger. This results from the nature of the property being, as it is, intangible personal property, possessing more the elements of a *chose in action* than of a chattel.

It will be further insisted that if the stock was pledged, that Culver, still holding the certificates, had the power to transfer the stock by the assignment of the certificates to a

bonâ fide holder, and that such holder would take the stock free of any claim of the bank by reason of such pledge. This would impress upon them the highest rights of commercial paper. But certificates of stock are not security for money in any respect, much less are they negotiable securities. As muniments of title they may undoubtedly be assigned or pledged, but the *bonâ fide* assignee or pledgee will take them subject to all the equities that existed against the assignee.

Mr. T. A. Hendricks, contra.

Mr. Justice DAVIS delivered the opinion of the court.

It is unnecessary to decide whether the first and third pleas would answer the declaration, if the transaction pleaded were lawful, because the directors of the bank were forbidden by law from dealing with Culver in the manner they did. At the time this proceeding took place the Currency Act of 1863 had been superseded by the act of June 3, 1864, which expressly repealed the former act. It is, therefore, by the provisions of the latter act that the conduct of banking associations must be governed, whether they were organized before or after it became a law. And in looking into this act, we find these associations expressly prohibited from making any loan or discount on the security of the shares of their own capital stock. And so marked is the policy of Congress on this subject, that it does not allow a bank to become the purchaser or holder of its shares at all, unless absolutely necessary to prevent loss on a debt previously contracted in good faith, and not then for a longer period than six months. It is easy to see, that if the power were given to a bank to loan money on the security of its shares, it would imply also a power to become the owner of those shares, and this Congress intended to guard against.

These institutions were created to subserve public purposes, and not the mere private interests of their stock holders. And in no better way could this object be attained than by placing shareholders, in their pecuniary dealings

with the bank, on the same footing with other customers. Besides, how could the capital of the bank be kept available for active use, if the shareholder, who had pledged his stock for borrowed money, should be unable to meet his obligation? To the extent of the debt the capital would be withdrawn, and it is hardly possible that this could be the case for any length of time, were the debt secured outside of the shares of the bank. But it is unnecessary to seek for the reason of this prohibition, as the provision concerning it is explicit, and free from ambiguity.

Although the section in question forbids loans or discounts by a bank on the security of its own shares of stock, it is argued that this inhibition does not extend to the case of deposits made by one bank with another. But a deposit is nothing but a loan of money, and is within both the letter and spirit of the provision. It is well known that country banks keep on deposit in New York, with bankers and merchants, a considerable amount of money for their own convenience, for which they receive more or less of interest. But whether interest be obtained or not, these deposits are, equally with paper discounted over the counter of the bank, loans of money, and the reason of the rule is equally applicable to them.

The banker is accountable for the deposits he receives as a debtor, and the individual borrower of money from the bank sustains no other relation to it. In both cases money is borrowed, to be returned in a greater or less period of time, according to the contract of the parties. Without pursuing the subject further, it is clear that the contract between the South Bend Bank and Culver was illegal, and cannot, therefore, be pleaded in avoidance of any duty imposed on the bank. It would seem, from the date of the certificates issued to Culver, that as soon as he took the stock he pledged it, and the bank is therefore without the excuse of endeavoring to secure a pre-existing debt contracted in good faith. The contract in its inception was in violation of law, and the bank cannot complain if it is made to suffer in consequence of it.

The defence interposed by the second plea is equally unavailing to the plaintiffs in error. This plea assumes that the bank had a lien upon the stock of Culver for his indebtedness to it, without any special agreement on the subject, by virtue of the provisions of the 36th section of the Currency Act of 1863, restricting a shareholder from transferring his stock as long as he owes the bank, which remained in operation, although the section was repealed by the act of 1864, by means of a by-law adopted when the section was in force, declaring that the stock of the bank shall be transferable only on the books of the bank, *subject to the provisions and restrictions of the act of Congress aforesaid.*

If it be conceded that the by-law intended to embrace the restrictions contained in the 36th section, it is hard to see what good it accomplished, because, as long as this section was in force, it was the law of the corporation, known to all men, and did not need the aid of a by-law to render it operative. And if it be contended that a bank may, through the agency of a by-law, retain a particular section that has been repealed, it is difficult to see why it may not by the same means retain all the remaining sections of the repealed statute that are applicable to its business, and thus antagonize itself to the whole policy of Congress on the subject. But of necessity a by-law cannot operate in this way, nor is there any reason to suppose it was intended that this one should have such an effect. In the absence of any action taken by the bank on the subject since the new law went into operation, the fair inference is that this by-law is used as an afterthought to serve the purposes of this suit. Congress evidently intended, by leaving out of the law of 1864 the 36th section of the act of 1863, to relieve the holders of bank shares from the restrictions imposed by that section. The policy on the subject was changed, and the directors of banking associations were in effect notified that thereafter they must deal with their shareholders as they dealt with other people. As the restrictions fell, so did that part of the by-law relating to the subject fall with them.

It remains to be seen whether, on the case stated, Lanier

and Handy can recover of the bank for a breach of corporate duty, notwithstanding the specific shares had already been transferred to other persons through the power of attorney which Culver gave when he attempted to pledge his stock as security for the deposits to be made with his New York house. And, in considering this question, we are relieved of any necessity of deciding between conflicting equities, for this suit does not seek to disturb the title of the adverse purchasers to the specific stock. It leaves them in possession of the property, and undertakes to subject the bank to damages for refusing to transfer the stock to the defendants in error. And, as we view this controversy, it makes no difference whether the transfers were actually made to other parties before or after the bank received notice of the assignment of the stock certificates by Culver to Lanier and Handy.

The power to transfer their stock is one of the most valuable franchises conferred by Congress on banking associations. Without this power, it can readily be seen the value of the stock would be greatly lessened, and, obviously, whatever contributes to make the shares of the stock a safe mode of investment, and easily convertible, tends to enhance their value. It is no less the interest of the shareholder, than the public, that the certificate representing his stock should be in a form to secure public confidence, for without this he could not negotiate it to any advantage.

It is in obedience to this requirement, that stock certificates of all kinds have been constructed in a way to invite the confidence of business men, so that they have become the basis of commercial transactions in all the large cities of the country, and are sold in open market the same as other securities. Although neither in form or character negotiable paper, they approximate to it as nearly as practicable. If we assume that the certificates in question are not different from those in general use by corporations, and the assumption is a safe one, it is easy to see why investments of this character are sought after and relied upon. No better form could be adopted to assure the purchaser that he can

buy with safety. He is told, under the seal of the corporation, that the shareholder is entitled to so much stock, which can be transferred on the books of the corporation, in person or by attorney, when the certificates are surrendered, but not otherwise. This is a notification to all persons interested to know, that whoever in good faith buys the stock, and produces to the corporation the certificates, regularly assigned, with power to transfer, is entitled to have the stock transferred to him. And the notification goes further, for it assures the holder that the corporation will not transfer the stock to any one not in possession of the certificates.

In this state of case Lanier and Handy made their purchase of Culver. They bought for value, without knowledge of any adverse claim, in full faith that the bank would observe its engagements, and pursued in all respects the directions given in the certificates. They were not told to give notice to the bank of their purchase, nor was there any necessity for notice, because, by the rules of the bank, Culver could not transfer the stock in the absence of the certificates, and these they had in their possession. It is therefore clear, in making their purchase of Culver, that they had a right to rely on the certificates as securing to them the stock which they represented. And it is equally clear that the bank, in allowing this stock to be transferred to other parties while the certificates were outstanding in the hands of *bonâ fide* holders, was guilty of a breach of corporate duty, and as its conduct operated to the injury of Lanier and Handy, an action will lie in their behalf to obtain satisfaction for the injury.

These views dispose of this case, and they are sustained by recent decisions in the Court of Appeals of New York and the Supreme Court of Connecticut,* and, as we are advised, they also are supported by the Supreme Court of New Jersey in a case not yet reported.

JUDGMENT AFFIRMED.

* Bridgeport Bank *v.* New York and New Haven Railroad Company, 30 Connecticut, 270; Same *v.* Schuyler et al., 34 New York, 30.