**United States Vs. Simms**

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**SooperKanoon Citation** : sooperkanoon.com/78290

**Court** : US Supreme Court

**Decided On :** 1803

**Appeal No.** : 5 U.S. 252

**Appellant** : United States

**Respondent** : Simms

**Judgement** :

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**United States v. Simms**

**5 U.S. (1 Cranch) 252**

*ERROR TO THE CIRCUIT COURT*

*FOR THE COUNTY OF ALEXANDER*

## SYLLABUS

The Acts of Congress of 27 February, 1801, and of 3 March, 1801, relative to the District of Columbia have not changed the laws of Maryland and Virginia, adopted by Congress as the laws of the District in such parts of the same respectively as

formerly belonged severally to those states any further than was made necessary by the change of jurisdiction. Suits for fines, forfeitures, and penalties imposed by the laws of Maryland or Virginia must be prosecuted and proceeded in according to the forms and provisions of those laws, but in the name of the United States where the prosecution was required to be conducted in the name of the state.

Where, by a law of Virginia, a penalty was imposed for keeping a gaming table, and the same was given to any person who should sue for the same, an indictment in the name of the United States for the offense cannot be sustained, but the penalty must be sued for in the form authorized by the law.

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The defendant was indicted for suffering a faro bank to be played in his house, contrary to an Act of the Assembly of Virginia of 19 January, 1798, ch. 2, sec. 3.

The act provides that

"Any person whatsoever who shall suffer the game of billiards, or any of the games played at the tables 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 offense, forfeit and pay the sum of $150, to be recovered in any court of record by any person who will sue for the same."

Upon the trial of the indictment, the court charged the jury that the proceeding by indictment to recover the penalty imposed by law for the offense stated in the indictment was improper, illegal, and could not be sustained.

To this opinion an exception was taken by the attorney of the United States, and the question before the court was whether an indictment was the proper process.

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MR. CHIEF JUSTICE MARSHALL 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:

"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 informers."

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" 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

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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 sixteenth section continues still to manifest a solicitude or 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 offense 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 embarrassment 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 reenacted 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 would be going a great way to construe this act

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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.*