

notes, 45 Harv. L. Rev. 697 (1932), 41 Yale L. Jour. 577 (1932). If a creditor may be compelled by a court to give up his right to a judicial sale in return for a cash appraisal value, it can be argued further that a court of equity has the inherent power to compel a creditor to accept securities under a fair reorganization plan in return for his claim. Cf. *Phipps v. C., R.I. & Pac. Ry. Co.*, 284 Fed. 945 (C.C. A. 8th 1922); see *Northern Pacific Ry. v. Boyd*, 228 U.S. 482, 508, 33 Sup. Ct. 554, 57 L. Ed. 931 (1913); Colin, Why Upset Price? An Argument for Reorganization by Decree, 28 Ill. L. Rev. 225 (1933); Rosenberg, Reorganization—The Next Step, 22 Col. L. Rev. 14 (1922); but cf. Swaine, Reorganization—The Next Step: A Reply to Mr. James N. Rosenberg, 22 Col. L. Rev. 121 (1922). In case of a bond issue secured by a mortgage to a trustee, such a result may be justified as an exercise of the jurisdiction of the court of equity over trusts. See *Straus v. Chicago Title & Trust Co.*, 273 Ill. App. 63 (1933), noted in 1 Univ. Chi. L. Rev. 623 (1934). If equity lacks inherent power to force dissenters to accept a plan, a statute may perhaps supply that deficiency. See *Detroit Trust Co. v. Stormfjeltz-Loveley Co.*, 257 Mich. 655, 242 N.W. 227 (1932); cf. *Canada Southern Ry. v. Gebhard*, 109 U.S. 527, 3 Sup. Ct. 363, 27 L. Ed. 1020 (1883). A dissenter should only be forced to accept an equitable plan, however, and such judicial or statutory action as has been suggested would focus attention clearly on the difficult problem of determining when a plan is fair to all classes of creditors and shareholders of a corporation. See *Northern Pacific Ry. Co. v. Boyd*, 228 U.S. 482, 33 Sup. Ct. 554, 57 L. Ed. 931 (1913); *Kansas City Ry. Co. v. Central Union Co.*, 271 U.S. 445, 46 Sup. Ct. 549, 70 L. Ed. 1028 (1926); *Jameson v. Guaranty Trust Co.*, 20 F. (2d) 808 (C.C.A. 7th 1927); Payne, Fair and Equitable Plans of Corporate Reorganization, 20 Va. L. Rev. 37 (1933); Bonbright and Bergerman, Two Rival Theories of the Priority Rights of Security Holders in a Corporate Reorganization, 28 Col. L. Rev. 127 (1928); Buscheck, A Formula for the Judicial Reorganization of Public Service Corporations, 32 Col. L. Rev. 964 (1932); Rohrlch, Creditor Control of Corporations; Operating Receiverships; Corporate Reorganizations, 19 Corn. L. Quar. 35, 53 ff. (1933).

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Criminal Law—Repeal of Constitutional Provision—Effect on Pending Prosecutions—[Federal].—Defendant, indicted in June, 1933 for violation of the National Prohibition Act, was not brought to trial until after the ratification of the Twenty-First Amendment, and pleaded that amendment as a bar to conviction. Held, that all proceedings pending under the prohibition laws at the date of the passage of the Twenty-First Amendment, and of the repeal of the Eighteenth Amendment thereby, were terminated automatically, and defendant must be discharged. *United States v. Chambers*, 54 Sup. Ct. 434 (1934).

Defendant had been convicted before the repeal of the Eighteenth Amendment, and the conviction had been affirmed by the Circuit Court of Appeals; petition for *certiorari* was filed in the Supreme Court after the repeal. Held, the judgment below must be reversed and defendant discharged. *Massey v. United States*, 54 Sup. Ct. 532 (1934).

The repeal of the Eighteenth Amendment raises for the first time the question of the status of prosecutions begun under a federal statute but incomplete when the constitutional provision authorizing the statute was repealed. No other federal constitutional provision has been repealed, and no similar situation appears to have given rise

to litigation under state constitutions. The repeal of a statute, however, is generally construed to act as a pardon to persons whose prosecution under the statute was incomplete at the time of repeal, unless there was a clause in the repealing act, or a general statute, continuing the power to punish past offenses. *Yeaton v. United States*, 5 Cranch (U.S.) 281, 3 L. Ed. 101 (1809); *United States v. Tynen*, 11 Wall. (U.S.) 88, 20 L. Ed. 153 (1870); *Keller v. State*, 12 Md. 322 (1858); cf. *Hobson v. People*, 48 Mich. 27, 11 N.W. 771 (1882). Since repeal of a constitutional provision is said to terminate legislation authorized solely by that provision, the court in the present cases reasoned from the analogy of a repealed statute to a nullified act and applied the general rule; thus prosecutions begun under the now nullified legislation, but not completed at the time of nullification, should be dismissed. See Burdick, *Law of the American Constitution* (1923), 406. The Twenty-First Amendment contained no saving clause, and the act of Congress [16 Stat. 432 (1871), 1 U.S.C.A. § 29 (1926)] which continues the power to punish offenses committed against subsequently repealed statutes is not applicable to a constitutional amendment. See Cooley, *Constitutional Limitations* (8th ed. 1927), 11; note, 32 Mich. L. Rev. 700 (1934).

As applied to statutes, the rule of construction which terminates prosecutions seems open to some criticism. It derives support in criminal cases from the ancient policy of favoring the accused by construing statutes strictly against the state. *Bank of St. Mary's v. State*, 12 Ga. 475 (1853); *Hartung v. People*, 22 N.Y. 95 (1860). And the same result is reached as in the case of a statute expressly withdrawing court jurisdiction. *Ex parte McCordle*, 7 Wall. (U.S.) 506, 19 L. Ed. 264 (1868). But the widespread enactment of general "saving clause" statutes, applicable to all subsequent repealing acts unless otherwise specified, is some evidence that in most instances of repealing legislation it was contemplated that pending prosecutions would continue. See 16 Stat. 432 (1871), 1 U.S.C.A. § 29 (1926); Cal. Pol. Code (1931), § 329; Ill. Cahill's Rev. Stat. (1933), c. 131, § 4; Iowa Code (1931), § 63 (1); Mich. Pub. Acts (1931), no. 25, § 42; N.Y. Cahill's Consol. Laws. (1930), c. 23, § 93; Ohio Throckmorton's Code (1929), § 26; Wis. Stat. (1931), c. 370, § 4; see *Hertz v. Woodman*, 218 U.S. 205, 30 Sup. Ct. 621, 54 L. Ed. 1001 (1910). And the application of the doctrine when the new legislation reflects no fundamental change of policy seems questionable. Cf. *Sturgis v. Spofford*, 45 N.Y. 446 (1871). Moreover, the operation of the rule in specific cases is apt to be fortuitous, dependent upon the speed with which particular courts, trial and appellate, dispose of the case, and may be the result of abuse of legal processes. The application of the rule is more defensible in the case of nullification of a statute by constitutional amendment, which would seem to reflect a fundamental change of policy. The care used in framing such amendments would afford almost conclusive evidence that the omission of a saving clause was intended to permit immediate cessation of all proceedings. The lower federal courts considering the problem before the decision in the *Chambers* case unanimously reached the same result. *Green v. United States*, 67 F. (2d) 846 (C.C.A. 9th 1933); *Smallwood v. United States*, 68 F. (2d) 244 (C.C.A. 5th 1933); *United States v. Gibson*, 5 F. Supp. 153 (D.C.M.D.N.C. 1933); *United States v. Borke*, 5 F. Supp. 429 (D.C.E.D. Mich. 1933); *United States v. Smith*, 5 F. Supp. 470 (D.C. W.D. Okla. 1933). See McLucas, *Some Legal Aspects of the Repeal of the Eighteenth Amendment*, 28 Ill. L. Rev. 950 (1934).

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