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Construing the license according to the subject-matter, and in its necessary connection with the offer on the freight, it could mean no more than permission to provision the vessel with live stock, such as is usual on a voyage, and may be procured at the Cape de Verdes. It might, indeed, admit of a doubt, whether any of the larger animals used for food, were included within the policy. The words of the first offer certainly were intended to confine the permission to the smaller animals. Stock is a term of the most general import: in its present extended application, it would include a great variety of subjects that never could have entered into contemplation of the parties.

In what sense was the term used? is the question to be decided: not what uses it might have been applied to in other contracts, or between other parties. The general want of precision in the language of maritime contracts, is an endless source of litigation among mercantile men. Courts of justice are, therefore, obliged to resort to such reasons as the nature, object and terms of the contract present, to determine the precise extent of the obligation of the parties.

We feel no inclination to add to the number of causes which vitiate a policy; but the amount of the premium depends upon such a variety of considerations (as often suggested by caprice as by judgment), that the contract, whatever it is, must be substantially adhered to.

Judgment reversed.

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*Criminal jurisdiction.—Contempts.*

The courts of the United States have no common-law jurisdiction, in cases of libel against the government of the United States.<sup>1</sup>

But they have the power to fine for contempts, to imprison for contumacy, and to enforce the observance of their orders, &c.

THIS was a case certified from the Circuit Court for the district of Connecticut, in which, upon argument of a general demurrer to an indictment for a libel on the president and congress of the United States, contained in the Connecticut Currant, of the 7th of May 1806, charging them with having in secret voted \$2,000,000 as a present to Bonaparte, for leave to make a treaty with Spain, the judges of that court were divided in opinion upon the question, whether the circuit court of the United States had a common-law jurisdiction in cases of libel?

*Pinkney*, Attorney-General, in behalf of the United States, and *Dana*, for the defendants, declined arguing the case.

THE COURT, having taken time to consider, the following opinion was delivered (on the last day of the term, all the judges being present) by JOHNSON, J.—The only question which this case presents is, whether the circuit courts of the United States can exercise a common-law jurisdiction in criminal cases. We state it thus broadly, because a decision on a case of

(a) February 13th, 1812. Absent, WASHINGTON, Justice.

<sup>1</sup> See note to United States v. Worrall, 2 Dall. 384.

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libel will apply to every case in which jurisdiction is not vested in those courts by statute.

Although this question is brought up now, for the first time, to be decided by this court, we consider it as having been long since settled in public opinion. In no other case, for many years, has this jurisdiction been asserted; and the general acquiescence of legal men shows the prevalence of opinion in favor of the negative of the proposition.

\*33] \*The course of reasoning which leads to this conclusion is simple, obvious, and admits of but little illustration. The powers of the general government are made up of concessions from the several states—whatever is not expressly given to the former, the latter expressly reserve. The judicial power of the United States is a constituent part of those concessions; that power is to be exercised by courts organized for the purpose; and brought into existence by an effort of the legislative power of the Union. Of all the courts which the United States may, under their general powers, constitute, one only, the supreme court, possesses jurisdiction derived immediately from the constitution, and of which the legislative power cannot deprive it. All other courts created by the general government possess no jurisdiction but what is given them by the power that creates them, and can be vested with none but what the power ceded to the general government will authorize them to confer.

It is not necessary to inquire, whether the general government, in any and what extent, possesses the power of conferring on its courts a jurisdiction in cases similar to the present; it is enough, that such jurisdiction has not been conferred by any legislative act, if it does not result to those courts as a consequence of their creation. And such is the opinion of the majority of this court: for the power which congress possess to create courts of inferior jurisdiction, necessarily implies the power to limit the jurisdiction of those courts to particular objects; and when a court is created, and its operations confined to certain specific objects, with what propriety can it assume to itself a jurisdiction, much more extended, in its nature very indefinite, applicable to a great variety of subjects, varying in every state in the Union and with regard to which there exists no definite criterion of distribution between the district and circuit courts of the same district.

The only ground on which it has ever been contended that this jurisdiction could be maintained is, that, upon the formation of any political body, an implied power to preserve its own existence and promote the end and object of its creation, necessarily results to it. But, \*without examining how far this consideration is applicable to the peculiar character of our constitution, it may be remarked, that it is a principle by no means peculiar to the common law. It is coeval, probably, with the first formation of a limited government; belongs to a system of universal law, and may as well support the assumption of many other powers as those more peculiarly acknowledged by the common law of England.

But if admitted as applicable to the state of things in this country, the consequence would not result from it, which is here contended for. If it may communicate certain implied powers to the general government, it would not follow, that the courts of that government are vested with jurisdiction over any particular act done by an individual, in supposed violation of the peace and dignity of the sovereign power. The legislative authority

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of the Union must first make an act a crime, affix a punishment to it, and declare the court that shall have jurisdiction of the offence.

Certain implied powers must necessarily result to our courts of justice, from the nature of their institution. But jurisdiction of crimes against the state is not among those powers. To fine for contempt, imprison for contumacy, enforce the observance of order, &c., are powers which cannot be dispensed with in a court, because they are necessary to the exercise of all others: and so far our courts, no doubt, possess powers not immediately derived from statute; but all exercise of criminal jurisdiction in common-law cases, we are of opinion, is not within their implied powers.

ALEXANDER SHIRRAS, JOHN BLACK, WILLIAM MILLIGAN, WILLIAM BLACKLOCK and JOSEPH VERREES *v.* JOHN CAIG and ROBERT MITCHELL.

*Mortgage.—Future advances.*

A mortgage of land, made by one who has a legal and equitable title to a moiety of the property which the mortgage purports to convey, passes only his legal right, although he had a power, from the person who held the residue of the legal, but not of the equitable estate in the land, to sell and convey his right also; the mortgagor not having affected to convey any part of it under his power from the other person, although his deed purported to mortgage the whole; and the equitable title not being in the person who gave the power.<sup>1</sup>

A plat referred to in the deed as being annexed to it, but which was never in fact annexed, and was not recorded with the deed, affords no evidence in aid of the description of the property mentioned in the deed.

A person cannot be charged with fraudulently secreting a deed, who places it upon record, as soon as the law requires.

It is not necessary to the validity of a mortgage, that it should truly state the debt it is intended to secure; but it will stand as a security for the real equitable claims of the mortgagees, whether they existed at the date of the mortgage, or arose afterwards, upon the faith of the mortgage, before notice of the defendants' equity.<sup>2</sup>

ERROR to the Circuit Court for the district of Georgia, by Shirras and others, original complainants, \*against Caig and Mitchel, original defendants, in a suit in equity, to foreclose a mortgage of a lot, [\*35

<sup>1</sup> Where one has both a power and an interest, a conveyance, without reference to the power, will be deemed to have been made in virtue of his ownership, though the ownership was not co-extensive with the power. *Hay v. Mayer*, 8 Watts 203; *Jones v. Wood*, 16 Penn. St. 25. s. p. *Birdsall v. Richards*, 18 Id. 256; *Wetherill v. Wetherill*, Id. 265.

<sup>2</sup> A mortgage may be given to secure future advances, and contingent debts, as well as those which are due and certain; the only question is, as to the *bona fides* of the transaction. *Conard v. Atlantic Ins. Co.*, 1 Pet. 387; *Conard v. Nicol*, 4 Id. 306; *Lawrence v. Tucker*, 23 How. 14; *Jones v. Guaranty and Indemnity Co.*, 101 U. S. 622; *Leeds v. Cameron*, 3 Sumn. 488; *Brown v. Keifer*, 71 N. Y. 610; *Taylor v. Cornelius*, 60 Penn. St. 187. It is not absolutely necessary, that such mortgage should ex-

press that object upon its face, provided the extent of the intended lien be clearly defined. *Craig v. Tappen*, 2 Sandf. Ch. 78; *Garber v. Henry*, 6 Watts 57. And see *Jones v. Guaranty and Indemnity Co.*, 101 U. S. 632-33. But such mortgage is only a lien, as against intervening incumbrances, from the time of making the advances, not from its date. *United States v. Lenox*, 2 Paine 180; *Ripley v. Harris*, 3 Biss. 199; *Brinkerhoff v. Marvin*, 5 Johns. Ch. 320; *Bank of Montgomery County's Appeal*, 36 Penn. St. 170; *McClure v. Rowan*, 52 Id. 458; *First National Bank v. Morsell*, 1 McArthur 155. Otherwise, if the mortgagee be under obligation to make the advance stipulated. *Moroney's Appeal*, 24 Penn. St. 372; *Taylor v. Cornelius*, 60 Id. 187; *Griffin v. Bartnett*, 4 Edw. Ch. 673; *Hall v. Crouse*, 13 Hun 557.