CASES DETERMINED

IN THE

UNITED STATES CIRCUIT COURT

FOR THE

PENNSYLVANIA DISTRICT.

APRIL TERM, 1792.

Present—WILSON, BLAIR and PETERS, Justices.

COLLET *v.* COLLET.

Naturalization.

The several states have a concurrent authority with the United States to naturalize aliens; but such authority cannot be exercised, so as to contravene the laws established by congress.

Thus, an individual state cannot exclude citizens naturalized by the authority of the general government; but she may adopt citizens upon easier terms than those which congress may impose.

THIS was a bill in equity, which stated the complainant to be a subject of his Britannic majesty, and the respondent to be a citizen of Pennsylvania. The respondent, in his plea, averred, that the complainant was a citizen of Pennsylvania; and this plea, if true, deprived the court of its jurisdiction, as the federal courts cannot (unless in some particularly specified cases) take cognisance of controversies between citizens of the same state. The question was argued, on the 21st of April, by *Randolph* and *Sergeant*, in support of the bill, and by *M. Levy*, in support of the exception to the jurisdiction. It then appeared, that the complainant was born in the Isle of Man, part of the British dominions; but it was certified, by the mayor of Philadelphia, that on the 30th of April 1790, he had taken the oath of allegiance to the state of Pennsylvania, agreeable to an act of the general assembly, passed the 13th of March 1789 (2 Dall. Laws 677), founded on the 42d section of the old constitution (1 Ibid., App. 60). It was likewise shown by a certificate from the collector of the customs of the port of Philadelphia, that on the 5th of November 1790, he was commander of the Pigou, an American ship; and the 6th section of the act of congress, for registering and clearing vessels (chap. 11, passed 1st September 1789) provides, that no

registry shall be made of any American ship, until it is sworn (among other things) that the "present master is a citizen of the United States."

*295] *In support of the plea, it was contended, that the power given to the United States, was meant as a guard against the narrow regulations that might, at any future period, be adopted by the individual states, to check the admission of aliens; and not as a security against the too easy extension of the rights of citizenship. This object would, therefore, be most effectually attained, by leaving the authority of the individual states unimpaired; and as there is nothing exclusive in the nature of the power, so neither is there anything exclusive in the manner of vesting it in the federal government. Though "Congress shall have power to establish a uniform rule of naturalization," Art. I., § 8, it does not necessarily follow, that each state of the confederacy may not, likewise, exercise the power of adopting aliens, upon its own terms. That an opinion prevails here, in favor of the state jurisdiction, must be inferred from the various laws which Pennsylvania, even subsequently to the naturalization act of congress (passed 26th of March 1790), has enacted, respecting the right that aliens may enjoy within her territory. 3 Dall. Laws 9, 183, 653. Nor is there any force in the argument, that the jurisdiction in maritime and admiralty cases is exclusively vested in the federal government, without the use of exclusive words; for those in their nature are exclusive, belong appropriately to the national character and arise extra-territorially of any state; whereas, naturalization is merely a municipal and domestic concern.

In opposition to the plea, it was urged, that contemplating the present situation of the United States, the birth of the complainant had made him an alien; and that, in order to change the condition of alienage into that of citizenship, the interposition of a competent constitutional and legislative authority was indispensable. This authority, throughout the United States, resides in the federal government alone; for the power of naturalization (which is given by the 8th section of the 1st article of the constitution) does of itself import exclusion. That one member of the Union should be able to disturb all the rest, by the introduction of obnoxious characters, was an evil to be prevented, and no effectual mode could be adopted to obviate the inconveniences of different systems and regulations in different states, short of giving to congress the exclusive power of establishing a uniform rule of naturalization. Exclusive words were not necessary in this case, any more than in the case of admiralty and maritime jurisdiction, which is, nevertheless, allowed to be exclusively vested in the general government, without the use of such words. If, therefore, congress had the exclusive power to admit citizens, that power being exercised by the act of the 26th March 1790, the naturalization, under the act of the legislature of Pennsylvania, was a mere nullity, and the complainant remains a subject of the British crown.

*296] *By the Court.—The question now agitated, depends upon another question; whether the state of Pennsylvania, since the 26th of March 1790 (when the act of congress was passed), has a right to naturalize an alien? And this must receive its answer from the solution of a third question; whether, according to the constitution of the United States, the authority to naturalize is exclusive or concurrent? We are of opinion,

then, that the states, individually, still enjoy a concurrent authority upon this subject; but that their individual authority cannot be exercised, so as to contravene the rule established by the authority of the Union. The objection founded on the word *uniform*, and the arguments *ab inconvenienti*, have been carried too far. It is, likewise, declared by the constitution (Art. I., § 8), that all duties, imposts and excises shall be *uniform* throughout the United States; and yet, if express words of exclusion had not been inserted as in a subsequent part of the same article (§ 10), the individual states would still, undoubtedly, have been at liberty, without the consent of congress, to lay and collect duties and imposts. Again, when it is said, that one state ought not to be privileged to admit obnoxious citizens, to the injury of another, it should be recollected, that the state which communicates the infection, must herself be first infected; and in this, as in other cases, we may be assured, that the principle of self-preservation will inculcate every reasonable precaution.

The true reason for investing congress with the power of naturalization has been assigned at the bar. It was to guard against too narrow, instead of too liberal, a mode of conferring the rights of citizenship. Thus, the individual states cannot exclude those citizens, who have been adopted by the United States; but they can adopt citizens upon easier terms, than those which congress may deem it expedient to impose.

But the act of congress itself, furnishes a strong proof that the power of naturalization is concurrent. In the concluding proviso, it is declared, "that no person heretofore proscribed by any state, shall be admitted a citizen aforesaid, except by an act of the legislature of the state, in which such person was proscribed." Here, we find, that congress has not only circumscribed the exercise of its own authority, but has recognised the authority of a state legislature, in one case, to admit a citizen of the United States; which could not be done in any case, if the power of naturalization, either by its own nature, or by the manner of its being vested in the federal government, was an exclusive power.[1]

Upon the whole, the Court think that the plea to the jurisdiction has been maintained; and, therefore,

The bill must be dismissed. (*a*)

(*a*) It is remarkable, that the argument in this case, turned entirely upon the point whether the federal power of naturalization was exclusive or concurrent; and nothing was said by either side respecting the existence and operation of the act of Pennsylvania, which, as it depended in form and spirit on the old constitution, was virtually repealed when that constitution was abolished. The ideas of the reporter on that subject, are contained in a note upon the naturalization laws of Pennsylvania, in his edition of the acts of the general assembly (vol. 1, p. 7 a). It may be proper to add, that there has since been a decision before Judge BIDDLE, in the common pleas of Philadelphia county, where the existence of the Pennsylvania law was the gist of the controversy:

[1] Overruled in Chirac *v.* Chirac, 2 Wheat. 259, 269, where it was determined, that the power of naturalization is exclusively in congress. The grant of such power to congress is incompatible with its exercise by the state governments. Golden *v.* Prince, 3 W. C. C. 313. S. P. Lynch *v.* Clark, 1 Sandf. Ch. 583. Since the adoption of the constitution, no state can, by any subsequent law, make a foreigner a citizen of the United States, nor entitle him to the rights and privileges secured to citizens by that instrument. Dred Scott *v.* Sandford, 19 How. 393; Anon. 21 Law Rep. 630.

*APRIL TERM, 1793.

Present, WILSON, IREDELL and PETERS, Justices.

UNITED STATES *v.* RAVARA.

Jurisdiction.—Consuls.—Privilege.

The circuit courts have concurrent jurisdiction with the supreme court, in cases affecting foreign consuls.[2]

A consul is not privileged from a criminal prosecution, for an offence against the laws of the country in which he resides.

The offence of sending threatening letters, *held* to be indictable in a circuit court.

THE defendant, a consul from Genoa, was indicted for a misdemeanor, in sending anonymous and threatening letters to Mr. Hammond, the British minister, Mr. Holland, a citizen of Philadelphia, and several other persons, with a view to extort money.

Before the defendant pleaded, his counsel (*Heatly*, *Lewis* and *Dallas*) moved to quash the indictment, contending that to the supreme court of the United States belonged the exclusive cognisance of the case, on account of the defendant's official character. By the 2d section of the 3d article of the constitution, it is expressly declared, that, "in all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction." By declaring in the sequel of the same section, "that in all the other cases before mentioned the supreme court shall have *appellate* jurisdiction," the word *original* is rendered tantamount to *exclusive*, in the specified cases. But surely, an original jurisdiction established by the constitution in the supreme court, cannot be vested by law in any inferior courts. The 13th section of the judicial act provides, that "the supreme court shall have, exclusively, all such
*298] jurisdiction of suits or proceedings *against ambassadors, or other public ministers, or their domestics or domestic servants, as a court of law can have or exercise, consistently with the law of nations; and original, but not exclusive, jurisdiction of all suits brought by ambassadors, or other public ministers, or in which a consul, or vice-consul shall be a party." This provision obviously respects civil suits; but the 11th section declares, that "the circuit court shall have exclusive cognisance of all crimes and offences cognisable under the authority of the United States, except where this act otherwise provides, or the laws of the United States shall otherwise direct, and concurrent jurisdiction with the district courts of the crimes and offences cognisable therein." This is a criminal prosecution, not otherwise provided for; and if the jurisdiction can be *exclusively* vested in the circuit court, it destroys the *original* jurisdiction given by the constitution to the

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And in that case, as well as the case of the United States *v.* Villato (*post*, p. 370), the act of assembly was adjudged to be obsolete.[1]

[1] And see the remarks of Chief Justice TANEY, in the License Cases, 5 How. 585.

[2] St. Luke's Hospital *v.* Barclay, 3 Bl. C. C. 259; Graham *v.* Stucken, 4 Id. 50; Lorway *v.* Lousada, 1 Low. Dec. 77; Gittings *v.* Crawford, Taney, Dec. 1.