## *APRIL TERM, 1793.

Present, WILSON, IREDELL and PETERS, Justices.

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### 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.

supreme court. In justice to the legislature, therefore, such a construction must be rejected; and the cognisance of the case be left, upon a constitutional footing, exclusively to the supreme court. The argument is the more cogent, from a consideration of the respect which is due to consuls, by the law of nations. Vatt. lib. 2, c. 2, § 34.

*Rawle*, the District-Attorney, stated in reply, that there was a material distinction between public ministers and consuls; the former being entitled to high diplomatic privilege, which the latter, by the law of nations, had no right to claim; and he contended, that the supreme court has original, but not exclusive, jurisdiction of offences committed by consuls: that the district court had jurisdiction (exclusively of the state courts) of all offences committed by consuls, except where the punishment to be inflicted exceeded thirty stripes, a fine of one hundred dollars, or the term of five months imprisonment: and that the circuit court had, in this respect, a concurrent jurisdiction with the supreme court as well as the district court. If, indeed, this is a crime "cognisable under the authority of the United States," it is within the express delegation of jurisdiction to the circuit court.

Wilson, Justice.—I am of opinion, that although the constitution vests in the supreme court, an *original* jurisdiction, in cases like the present, it does not preclude the legislature from exercising the power of vesting a *concurrent* jurisdiction, in such inferior courts, as might by law be established: and as the legislature has expressly declared, that the circuit court shall have "exclusive cognisance of all crimes and offences, cognisable under the authority of the United States," I think, the indictment ought to be sustained.

Iredell, Justice.—I do not concur in this opinion, because it appears to me, that, for obvious reasons of public policy, the *constitution intended to vest an exclusive jurisdiction in the supreme court, upon [*299 all questions relating to the public agents of foreign nations. Besides, the context of the judiciary article of the constitution seems fairly to justify the interpretation, that the word *original*, means *exclusive*, jurisdiction.

Peters, Justice.—As I agree in the opinion expressed by Judge Wilson, for the reasons which he has assigned, it is unnecessary to enter into any detail.

The motion for quashing the indictment was accordingly rejected, and the defendant pleaded *not guilty;* but his trial was postponed, by consent, until the next term.(*a*)

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(*a*) The defendant was tried in April session 1794, before Jay, Chief Justice, and Peters, Justice; and was defended by the same advocates, on the following points: 1st. That the matter charged in the indictment was not a crime by the common law, nor is it made such by any positive law of the United States. In England, it was once treason; it is now felony; but in both instances, it was the effect of positive law. It can only, therefore, be considered as a bare menace of bodily hurt; and, without a consequent inconvenience, it is no injury, public or private. 4 Bl. Com. 5; 8 *Hen. VI., c.* 6 § 9; *Geo. I., c.* 22; 4 Bl. Com. 144; 3 Id. 120. 2d. That considering the official character of the defendant, such a proceeding ought not to be sustained, nor such a punishment inflicted. The law of nations is a part of the law of the United States; and the

## *Livingston *et al. v.* Swanwick.

*Witness.—Pleading.—Variance.*

A broker is a competent witness, to prove his own authority to make the agreement upon which the suit is brought, notwithstanding his commission may depend upon the establishment of the contract.

In an action on a contract, made by a broker on behalf of the defendant, for the delivery of stock, a variance between the declaration and the written agreement is not material; the actual contract being proved as laid, of which the writing is merely corroborative.

This was an action on the case, to recover the difference upon a stock contract, which Samuel Anderson, as the broker and agent of the defendant, who resided in Philadelphia, had entered into with the plaintiffs, who resided in New York, in the following terms:—

"I do hereby engage to deliver to John R. Livingston, Esq., the engagement of John Swanwick, Esq., of Philadelphia, to deliver to J. R. Livingston, Esq., aforesaid, one hundred shares of the bank stock of the United States, on the 5th January next ensuing, upon receiving from the said John R. Livingston, payment for the same, at the rate of twenty-one shillings and six pence in the pound.

New York, 15th July 1791. Samuel Anderson."

I. On the trial of the cause, the plaintiffs produced a correspondence between Anderson and the defendant, in relation to the contract, after it was made, and then offered Anderson himself as a witness, to prove that he had received a verbal authority to make the contract for the defendant; that he had accordingly executed the instrument above set forth; and that there had been a punctual compliance with the stipulations, on the part of the plaintiffs.

The defendant objected, that Anderson was not a competent witness to prove his own authority; and that he was interested in the question, as he

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law of nations seems to require, that a consul should be independent of the ordinary criminal justice of the place where he resides. Vatt. lib. 2, c. 2, § 34. 3d. But that, exclusive of the legal exceptions, the prosecution had not been maintained in point of evidence; for it was all circumstantial and presumptive, and that too, in so slight a degree, as ought not to weigh with a jury on so important an issue. 2 Hale H. P. C. 289; 4 Smol. Hist. Eng. p. 382 in note.

*Rawle*, in reply, insisted, that the offence was indictable at common law; that the consular character of the defendant gave jurisdiction to the circuit court, and did not entitle him to an exemption from prosecution, agreeable to the law of nations; and that the proof was as strong as the nature of the case allowed, or the rules of evidence required. In support of this argument, he cited the following authorities. 4 Bl. Com. 142, 144; 1 Lev. 146; 1 Keb. 809; 4 Bl. Com. 180; Str. 193–4; Bl. Com. 242; Crown Circ. 376; Fost. 128; Leach, 204; 1 Dall. 338; 1 Sid. 168; Comb. 304; Leach, 39; Ld. Raym. 1461; 1 Dall. 45.

The Court were of opinion, in the charge, that the offence was indictable, and that the defendant was not privileged from prosecution, in virtue of his consular appointment.

The jury, after a short consultation, pronounced the defendant, guilty; but he was afterwards pardoned, on condition (as I have heard) that he surrendered his commission and *exequatur*.

As to the question of jurisdiction, see United States *v.* Worrall, *post*, p. 384.