the United States; and that several of the letters, thus intercepted, had been read at the meeting at Braddock's field.

But it was objected, on behalf of the *prisoner*, that the robbery of the mail was a felony, for which, as a substantive and independent crime, he was actually charged by another indictment; and that, therefore, evidence relating to it should not be given on the present issue, as the prisoner was not prepared to answer, and a prejudice might be excited against him in the mind of the jury.

By the Court.—An act committed with a felonious intention, cannot be given in evidence, upon the trial of an indictment for high treason. It does not yet appear, that the mail was intercepted and rifled with a traitorous intention; and so far as it respects the prisoner, there is another indictment against him, charging the offence merely as a felony. Under these circumstances, the testimony cannot be admitted.

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*APRIL TERM, 1796. [*358

Present, Iredell and Peters, Justices.

Hulsecamp *v.* Teel.

Jurisdiction.

In actions sounding in *tort*, the damages laid in the declaration, are the matter in dispute, and the test of jurisdiction.

This was an action for an assault and battery, committed on the high seas, and the damages were laid in the declaration at $1000; but the controversy being referred, the referees reported only $45 in favor of the plaintiff. In April term 1795, *M. Levy*, for the defendant, obtained a rule to show cause why the report of the referees should not be quashed, and the action dismissed: and the question was now argued by him, on the one side, and by *Rawle*, upon the other.

In support of the rule, *Levy*, having adverted to the 3d article of the constitution of the United States, as the foundation of the judicial authority, contended, that by the 11th section of the judicial act, which establishes the jurisdiction of the circuit court, no suit could be there instituted and maintained, unless the plaintiff was entitled to recover, and actually recovered, a sum exceeding $500, exclusive of costs. He drew a similar inference from the provision in the 12th section of the act, which requires that suits removed into the circuit court from a state court, should be of the same value; and he distinguished between actions for *tort*, and actions upon contract, in order more forcibly to exclude the cognisance of the court in the former, than in the latter instances. The 20th section, empowering the court to adjudge the plaintiff to pay costs, was manifestly designed, in that respect, to give a jurisdiction, which the court would not otherwise possess, on account of the general limitation of jurisdiction as to the sum or matter in dispute: and in the provision, that the district court shall have jurisdic-

tion of offences where the fine does not exceed $100, it is evident, that the jurisdiction cannot be ascertained, until the judge is about to pronounce sentence.

Rawle, in opposing the rule, observed, that the act of congress did not recognise any distinction betweeen actions for *tort*, and actions upon contract; but barely required that the matter in dispute should exceed the sum or value of $500, exclusive of costs; and the language is the same in the 9th section, in *relation to the jurisdiction of the district court in suits brought by the United States. The very provision, indeed, which authorizes the court, in the 20th section, to adjudge that the plaintiff shall pay costs, where less than the sum of $500 is recovered, shows clearly that the jurisdiction was intended to be vested, if the matter in dispute, as stated in the declaration, exceeds the specified amount, though a jury or referees should not give so much. The matter in dispute in this cause was an aggravated personal injury, which might have endangered the plaintiff's life, and certainly would have justified heavier damages.

*359]

The Judges, though they delivered their opinions separately, concurred in the following positions, as the ground of decision.

By the Court.—That the sum or value of the object in controversy should amount to $500, was deemed by the legislature a reasonable limit to the jurisdiction of this court: but the law itself likewise provided the remedy against any transgression of that limitation, by declaring that the plaintiff, who recovers less may be adjudged to pay costs. The very force of the expression vests a jurisdiction; since it would be impossible to adjudge that the plaintiff should pay costs, without taking cognisance of the cause.

But whatever distinction might be made, in other respects, between suits instituted to recover a sum certain, and suits brought to recover damages for a *tort*, certain it is, that in the latter cases, there can be no rule to ascertain the jurisdiction of the court, but the value laid in the declaration. If the finding of the jury was the criterion, then the jurisdiction of the court would depend entirely on the verdict; and if a verdict in favor of the plaintiff, for less than $500, would defeat the jurisdiction, a verdict against him must unquestionably be equally fatal.

We think, therefore, that the amount of the plaintiff's claim must be considered as the matter in dispute; and that upon a fair comparison and construction of the 11th and 20th sections of the judicial act, the mere finding of a jury, or of referees, upon the question of damages, cannot affect the jurisdiction of the court.(*a*)

Rule discharged.

(*a*) The following authorities were cited by Peters, Justice:—Debt, detinue, &c., will not lie for a debt under forty shillings; 2 Inst. 311, 312. Com. Dig. Yet, the smallness of the sum must appear on the face of the declaration, 3 Burr. 1592; Barnes 497, and though reduced by a set-off, it will not affect the jurisdiction of the court. 3 Wils. 48; Com. Dig. 590.

In Wilson, plaintiff in error, *v.* Daniel, in the supreme court of the United States, at August term 1798 (in the absence of Wilson, Justice), the Court adjudged, that the verdict or judgment was not to be regarded as the rule for fixing the value of the matter in dispute, on a question of jurisdiction: and that the demand of the plaintiff, that is, the value of the thing put in demand, is to be considered; unless the law itself

*OCTOBER TERM, 1796.

Present, WILSON and PETERS, Justices.

SCHERMERHORN *v.* L'ESPENASSE *et al.*

Injunction.

An injunction may issue, without affidavit, if other sufficient evidence be produced.

An injunction will not be dissolved, by reason of delay in bringing the cause on for hearing, which appears to have arisen from inadvertence and mistake—there being no evidence of wilful procrastination.

BILL IN EQUITY. This bill stated, that on the 31st of December 1790, the defendants, merchants of Amsterdam, had executed to the complainant (who resided at the same place) a power of attorney, to receive to his own use, the interest due on $180,000 of certificates of the United States, bearing interest at six per cent. from the 1st of January 1788, to the 31st December 1790, amounting to $32,400; but that, notwithstanding this assignment, the defendants, on the 16th June 1792, received certificates for the $32,400 of interest, and agreeable to the act of congress, funded the amount at three per cent. in their *own names. The bill then prayed relief, according to the equity of the case, and that an injunction might issue [*361 to prevent the defendants from transfering the stock, or receiving the principal or interest; and also to prevent the register and transfer clerk of the treasury, and the cashier of the Bank of the United States, from allowing a transfer, or paying the principal or interest of the stock, pending the suit.

On filing the bill, *Du Ponceau* exhibited to the court the power of attorney, duly authenticated, from the defendants to the complainants, and his own affidavit, stating that he had inspected the books of the treasury, where he saw that the identical stock in question was registered in the names of the defendants. Under these circumstances, the injunction issued; but no *subpœna* was ever taken out, nor any further proceedings had in the suit, until the present term, when *Lewis* moved for a rule to show cause why

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makes the rule, as in an action of debt on a bond (in which only the penalty and interest can be recovered), when that rule is to be pursued, whatever may be the damages laid in the declaration.[1]

IREDELL, Justice, agreed in the opinion of the court, as it applied to the original suit in the inferior court: but he dissented from its application to the case of a writ of error, when the sum rendered by the judgment was, in his opinion, to be deemed the value of the matter in dispute, in the supreme court.

CHASE, Justice, agreed in the decision of the court, because the legal judgment (of which alone the court could take notice) was for the penalty of the bond, on which the action had been brought; though, in an irregular manner, the record says, that judgment was to be released, upon payment of a smaller sum, than would authorise the party to bring a writ of error. He thought that, to ascertain the value of the matter in dispute, the court must always refer to the original suit; but he would not admit, that the demand of the plaintiff furnished the rule, as the plaintiff might, on that ground, entitle himself, in every case, to a writ of error, by laying his damages proportionally high.

[1] 3 Dall. 401.