The Cassius.

Ketland, *qui tam*, *v.* The Cassius.

Jurisdiction.

The circuit courts have no original jurisdiction, in suits for penalties and forfeitures.
The district courts have exclusive original jurisdiction of all suits for penalties and forfeitures, under the laws of the United States.

An information that had been exhibited against the Cassius, as a vessel illegally fitted out within the jurisdiction of the United States,(*a*) came on to be argued, upon a suggestion filed *ex officio* by the attorney of the district, in pursuance of directions from the president, stating, that the vessel was the *366] public *property of the French republic, and therefore, not liable to seizure and forfeiture. But soon after the argument was opened on the merits, a doubt was intimated by the court, whether the circuit court had jurisdiction in this case? And the counsel were requested, in the first instance, to discuss that point.

Lewis, for the informant, contended, that the district court had not, and that this court had, jurisdiction. He referred to the 9th, 11th, 21st and 22d of sections the judicial act; and from comparing these, endeavored to establish his general position. He said, that the 9th section does not give the jurisdiction to the district court; for an information *in rem* is not within the first clause of the section, which gives cognisance of crimes and offences to that court; nor is it within the clause creating an exclusive original cognisance of all civil cases of admiralty and maritime jurisdiction, for this is not a civil case of that description, but a proceeding to enforce a forfeiture for an offence; and it is certainly not included in the clause of seizures under the laws of impost, navigation or trade. With respect to the clause giving the district court, "exclusive original cognisance of all seizures on land, or other waters, &c., and of all suits for penalties and forfeitures incurred under the laws of the United States," it must, in order to preserve consistency in the different parts of the law, be understood to mean exclusive of the state courts, and not of the circuit court. Penalties of a specific sum, recovered by civil suits *in personam*, are here intended to be distinguished from proceedings *in rem*; and in the former, but not in the latter case, a jurisdiction is given to the district court. The accuracy of this construction may likewise be strongly inferred, considering that an appeal is given from the district to the circuit court, in suits *in personam*, but not in suits *in rem*; and therefore, if the opposite doctrine prevailed, the circuit court would be ousted of all jurisdiction, original, as well as appellate. If it should be said, that this seizure is of a vessel exceeding ten tons burden, made on navigable waters, within the district, and that it is consequently embraced by the clause which gives jurisdiction to the district court in the case of seizures; t is enough to answer, that the operation of that clause is confined to seizures under laws of impost, navigation or trade. But the forfeiture is distinct from the seizure; and where a penalty is given, as well as a forfeiture incurred, for the breach of any law (which is the case in the present

(*a*) See United States *v.* Peters, in the supreme court of the United States. (3 Dall. 121.)

instance, and is frequently the case in other instances), a suit for the penalty may be instituted in the district court, and an information to enforce the forfeiture may be filed in the circuit court. Then, the 11th section of the judicial act gives to the circuit court, "exclusive cognisance of all crimes and offences, cognisable *under the authority of the United States, except where the act otherwise provides, or the laws of the United [*367 States shall otherwise direct, and concurrent jurisdiction with the district courts of the crimes and offences cognisable therein." Unless, therefore, there is any law giving cognisance to the district court, this section gives it exclusively to the circuit court. But even if the district court has cognisance, either the present cause of forfeiture must be taken out of the denomination of crimes and offences, or by the express words of the act, the circuit court is vested with a concurrent jurisdiction; and the exclusive words can only be rendered operative by restricting them to the state courts.

Rawle (attorney for the district) stated the general opinion and uniform practice to be in favor of the exclusive jurisdiction of the district court; and he contended, that a fair and rational analysis of the law, would admit of no other construction. It has been decided here, as well as in England, that proceedings of this nature are civil suits. Cowp. 391; *United States* v. *La Vengeance*;(*a*) and the words of the judicial act are so strongly exclusive, in giving jurisdiction to the district court, that they cannot be misunderstood or disregarded. Nor does the contradiction suggested really exist; for, if the obvious distinction between prosecutions against persons for crimes, and proceedings to recover a forfeiture, is adverted to, there will be no inconsistency in referring the concurrent jurisdiction of the circuit court to cases of the former description, while the exclusive original jurisdiction of the district court is asserted, in cases of the latter description.

PETERS, Justice.—The language of the act of congress is so forcible, to vest an exclusive jurisdiction in the district court, that the impression on my mind can never be obviated, but by something equally authoritative, direct and conclusive. The argument which has been opposed to this language, merely consists of slight analogies, doubtful implications and unsatisfactory deductions, from a comparative view of different sections of the law. To take jurisdiction, however, in any case, the court ought to be clearly of opinion, that the constitution and the law intended to give it; but here, the words will hardly admit a doubt upon the intention of the legislature, to exclude the jurisdiction of the circuit court; and therefore, we can have no pretence whatever to sustain the present information.

I have uniformly affixed this construction to the law. In the case of the *United States* v. *Guinet* (*ante*, p. 321), for being concerned in illegally fitting out a French privateer, the party was arrested,* and some cannon [*368 and other articles were seized. I, then, upon full consideration, directed that the information *in rem*, to enforce the forfeiture of the cannon, should be instituted in the district court; but I bound the defendant over to the circuit court, to answer personally for the offence. The practice has, I believe, been conformable to this precedent: forfeitures under the excise laws have certainly been sued for, without exception, in the district court, upon the general

(*a*) 3 Dall. 297. At the request of the court, I produced my notes in this case, on the argument.

jurisdiction given by the judicial act, and not upon any special jurisdiction created for that purpose.

Wilson, Justice.—The court is bound to take notice of a question of jurisdiction, whenever it may occur, and however it may be proposed: for, if we are satisfied, that we have not legal cognisance of any cause—or, in terms less direct, if we are not satisfied, that we have cognisance; we ought not to proceed to a decision, or an investigation, upon its merits.

In the present instance, it is a question of great importance, and perhaps, of some difficulty; but the strong bias of my mind (which increases, indeed, with every moment's reflection upon the subject) is opposed to the alleged jurisdiction of the court. It is supposed by the counsel for the informant, that the jurisdiction is maintainable, on the positive words of the 11th section, and on a fair implication resulting from a view of the 21st and 22d sections of the judicial act: for it is said, if the court has not original jurisdiction, by the 11th section, it can have no jurisdiction at all; since its appellate jurisdiction established by the 21st and 22d sections, is confined to civil causes. But the jurisdiction in the case of crimes and offences, obviously relates to prosecutions against persons; and when viewed in that light, neither the positive words of the 11th section, nor any implication resulting from the 21st and 22d sections, can be applicable to the present cause, which is not described by the former, nor affected by the latter: to take cognisance of a proceeding merely *in rem*, cannot be considered as taking cognisance of a crime or offence.

When, however, we advert to the jurisdiction given to the district court, every shadow of doubt seems to vanish. The 9th section of the act declares that "the district court shall have exclusive original cognisance of all suits for penalties and forfeitures, incurred under the laws of the United States." The exclusion is expressed in strong and unqualified terms; nor can it, by any reasonable interpretation, be restricted to a mere exclusion of the state courts. Wherever, indeed, a qualified exclusion is intended, the expression of the legislature corresponds with that intention. Thus, it is provided, in *369] two different *members of the very same section, that the district court shall have, "exclusively of the courts of the several states," cognisance of all crimes and offences committed upon the high seas, &c., and of suits against consuls and vice-consuls. But if the construction which I have stated is correct, no contradiction exists, to call for any strained exposition of the law. The jurisdiction given to the circuit court, whether exclusive or concurrent, will be supported, by applying it to prosecutions against delinquents, for crimes and offences; and the exclusive jurisdiction given to the district court, will be preserved, by allotting to it all suits for penalties and forfeitures under the laws of the United States. Whether, therefore, this is a suit for a forfeiture, appears, upon the whole, to be the only real object of inquiry. We think, that it is a suit of that denomination; and consequently, cannot take cognisance of it.

But the subject is entitled to the most solemn consideration, and the most authoritative judgment. We shall be happy, therefore, to assist in putting it upon any proper footing, to obtain the opinion of the supreme court. In the meantime—

By the Court.—Let the information be dismissed. (*a*)

(*a*) *Lewis* doubted, whether a writ of error would lie, for want of parties, as the

*APRIL TERM, 1797.

Present, IREDELL and PETERS, Justices.

UNITED STATES *v.* VILLATO.[1]

Treason.—Alienage.

An unnaturalized alien cannot be guilty of treason against the United States.
The naturalization act of Pennsylvania of 1789 was repealed by the adoption of the constitution of 1790.[2]

THE defendant had been committed by the district judge, on a charge of high treason against the United States, and on the return to a *habeas corpus*, issued under the act of Pennsylvania (2 Dall. Laws, 241), it appeared, that he had entered on board of a French privateer, "in parts out of the territory of the United States, and that, having so entered, he aided in capturing an American vessel."

But it was objected, by *Dallas* and *Du Ponceau*, for the prisoner, that he was not liable to a charge of high treason; because he was by birth a Spaniard, and had never become a naturalized citizen of the United States. They contended, therefore, that he ought to be discharged from the prosecution; independently of any inquiry, whether the offence could be deemed high treason, even in a citizen.

The facts were these: Francis Villato was born within the dominions of the King of Spain; he came from New Orleans to Philadelphia, in the beginning of the year 1793, and on the 11th of May following, he took and subscribed, before the mayor of the city, the oath specified in the third section of the act of assembly, passed on the 13th of March 1789 (2 Dall. Laws, 676). He afterwards went to the West Indies, entered on board a French privateer, and acted as prize-master of the American brig John, of New York, while he was on board, and procured to be libelled and condemned at Cape François.

Under these circumstances, the argument entirely turned upon the question—whether the prisoner had become a citizen of the United States, in consequence of the oath taken and subscribed by him, on the 11th of May 1793?

For the affirmative of the proposition, *Lee*, the attorney-general of the United States, and *Morgan*, contended, that the act of Pennsylvania was in force in the year 1793; that it was not affected by the establishment of the new state constitution, nor repealed by any subsequent law; that the power of naturalization *granted to the federal government was concurrent with, and not exclusive of, the state jurisdiction upon the subject; [*371

French republic had refused to file a claim to the vessel; and he said, that he was prepared to contend, that the suggestion filed *ex officio* by the attorney of the district, ought to be dismissed. The next day, he mentioned, that presuming the decision against the jurisdiction of the circuit court, was, in effect, a recognition of the jurisdiction of the district court, he should report to that tribunal, without giving this court (who had deferred pronouncing their decision, in order that he might consider the matter) any further trouble.

[1] s. c. Whart. St. Trials, 185. [2] See note to the case of Collet *v.* Collet, *ante*, p. 294.