adjudged, that the admiralty jurisdiction which has been exercised in the United States by the consuls of France, not being so warranted, is not of right.

It is further ordered by the said supreme court, that this cause be, and it is hereby, remanded to the district court for the Maryland district, for a final decision, and that the several parties to the same do each pay their own costs.

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*17] *FEBRUARY TERM, 1795.

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UNITED STATES *v.* HAMILTON.

*Bail.*

A defendant committed on a charge of treason is bailable.

THE prisoner had been committed upon the warrant of the district judge of Pennsylvania, charging him with high treason; and being now brought into court upon a *habeas corpus*, *Lewis* alleged, that there was not the slightest ground for the accusation brought against the prisoner, who had been committed, without ever having been heard, and without knowing the name of any witness that had been examined, or the scope of any deposition that had been taken, against him: and he moved, that the prisoner should either be discharged absolutely, or, at least, upon reasonable bail.

*Rawle* (the attorney of the district) admitted, that in the single case of the prisoner, there had not been a hearing before the district judge, previously to the commitment; but when the state of the country is recollected, the number of delinquents, and the urgency of the season, he presumed, that this circumstance (independently of the established character of the judge) would not be ascribed to a want of vigilance, or a spirit of oppression. He insisted, however, that the discretion vested in certain judges, relative to a commitment for crimes, by the 33d section of the judicial act (1 U. S. Stat. 91), having been exercised by the district judge, on such depositions as satisfied him, this court, having merely a concurrent authority, can only revise his decision in one of two cases: 1st. The occurrence of new matter; or 2d. A charge of misconduct—neither of which is pretended. But after stating the general character of the insurrection, he read several affidavits, with a view to establish the prisoner's agency in it; and concluded with urging, that, if the prisoner was released at all, it should be on giving satisfactory bail to take his trial in the circuit court. 4 Bl. Com. 296; 2 Hawk. 176 (*n*).

*Lewis* examined the affidavits produced against the prisoner, to show,
*18] that although he attended at several meetings of the *insurgents, his deportment, upon those occasions, was calculated to restore order and submission to the laws; and he added the affidavits of several of the most respectable inhabitants of the western counties, in testimony of the propriety of the prisoner's conduct throughout the insurrection.

THE COURT, after holding the subject for some days under advisement,

directed the prisoner to be admitted to bail, himself in the sum of $4000, and two sureties, each in the sum of $2000.

WILSON, Justice.—The recognisance must be taken for the defendant's appearance at the next stated circuit court. The motion for appointing a special circuit court to try offences of this description, at a place nearer to the scene in which they occurred, has not escaped our attention; and with a wish, if possible, to grant it, we have viewed the subject in every light; but hitherto the difficulties are apparently insurmountable. We will, however, state the principal ones, that the counsel may, if they please, endeavor to remove them.

1. The next circuit court is so near, that it will not be possible to commence and finish the business of the trials for treason, at a special court to be previously held; and it is very questionable, whether we can appoint a special circuit court, at a distant period, to overleap the session of the stated court. The impropriety of such an interference is the more striking, when it is recollected, that the circuit court itself, as well as the supreme court, has a power to appoint a special sessions for the trial of criminal causes. (1 U. S. Stat. 75, § 5).

2. But even if a special court were to be appointed to be held at a distant period, overleaping the stated circuit court, could an indictment found at the latter, be prosecuted and tried at the former? There is a provision, "that all business depending for trial at any special court, shall, at the close thereof, be considered as of course removed to the next stated term of the circuit court" (1 U. S. Stat. 334, § 3); but there is no power given to remit to a special court, the business depending for trial, before the said circuit court.

3. And suppose, a special circuit court were to be appointed previously to the stated court, could both be in session at the same time? Or could two grand juries be impanelled at the same time, for the same district, and both be qualified to present all the offences (including of course, the offences of treason) committed within their jurisdiction? (*a*)

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## *BINGHAM, Plaintiff in error, *v.* CABOT *et al.* [*19

*Evidence.—Bill of exceptions.—Divided court.*

In a suit by the owner of a privateer, against a public agent of the government, to recover the proceeds of property captured, but not condemned, which went into the defendant's hands, documentary evidence, showing in what character he received the property, is admissible.

A bill of exceptions is conclusive, as to the evidence that was before the court below.

If the judgment below be reversed on the merits, but the court is divided on the question of jurisdiction, a *venire de novo* will not be awarded.

THIS was a writ of error to remove the proceedings from the Circuit Court for the district of Massachusetts; and on the return of the record, it appeared, that the defendants in error, being joint-owners of the armed ship called the Pilgrim, formerly commanded by Hugh Hill, had instituted an

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(*a*) *Lewis* and *M. Levy* (as I am informed) attempted to obviate the obstacles above suggested; but it appears, without effect, as a special circuit court was not appointed on this occasion. See the trials for treason, 2 Dall. 335–57.