Hodgson & Thompson *v.* Bowerbank and others.

Jurisdiction.

Although the plaintiff be described in the proceedings as an alien, yet the defendant must be expressly stated to be a citizen of some one of the United States. Otherwise, the courts of the United States have not jurisdiction in the case.[1]

Error to the Circuit Court for the district of Maryland. The defendants below were described in the record as "late of the district of Maryland, merchants," but were not stated to be citizens of the state of Maryland. The plaintiffs were described as "aliens and subjects of the king of the united kingdom of Great Britain and Ireland."

Martin contended, that the courts of the United *States had not jurisdiction, it not being stated that the defendants were citizens of any state. [*304

C. Lee, contrà.—The judiciary act gives jurisdiction to the circuit courts, in all suits in which an alien is a party. (1 U. S. Stat. 78, § 11.)

Marshall, Ch. J.—Turn to the article of the constitution of the United States, for the statute cannot extend the jurisdiction beyond the limits of the constitution.

The words of the constitution were found to be "between a state, or the citizens thereof, and foreign states, citizens or subjects."

The Court said, the objection was fatal.

The record was afterwards amended, by consent.

Keene *v.* United States.

Jurisdiction of seizure.

The trial of seizures under the act of the 18th February 1793, "for enrolling and licensing ships or vessels, to be employed in the coasting-trade and fisheries, and for regulating the same," is to be in the judicial district in which the seizure was made; without regard to the district where the forfeiture accrued.[2]

Error to the Circuit Court of the district of Columbia, in a case of seizure of certain merchandise, being part of the cargo of the schooner Sea Flower, Matthew Keene, claimant, imported from the Havana, in the island of Cuba, into the port of Vienna, in the district of Maryland, the vessel having sailed on a foreign voyage, under a coasting license. The goods having been landed at Vienna, were transported to Alexandria, in the district of Columbia, where they were seized by the collector of that port, and libelled and condemned in the district court of that district, whose sentence was affirmed by the circuit court.

Swann and *Martin*, for the plaintiff in error, contended, that there was no law which authorized the seizure, *or the trial and condemnation out of the district into which the goods had been first imported. [*305

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[1] Picquet *v.* Swan, 5 Mason 35; Wilson *v.* City Bank, 3 Sumn. 422.

[2] The Merino, 9 Wheat. 391.

The goods were condemned under the 8th section of the act of congress, "for enrolling and licensing ships or vessels to be employed in the coasting-trade and fisheries, and for regulating the same," passed February 18th, 1793 (1 U. S. Stat. 308), which enacts, "that if any ship or vessel, enrolled or licensed as aforesaid, shall proceed on a foreign voyage, without first giving up her enrolment and license to the collector of the district comprehending the port from which she is about to proceed on such foreign voyage, and being duly registered by such collector, every such ship or vessel, together with her tackle, apparel and furniture, and the goods, wares and merchandise so imported therein, shall be liable to seizure and forfeiture."

By this act, the forfeiture arises upon importation. The importation was complete at Vienna, in the district of Maryland, where only the trial can be lawfully had. By the 35th section of the act, it is enacted, "that all penalties and forfeitures which shall be incurred by virtue and force of this act, shall and may be sued for, prosecuted and recovered, in like manner as penalties and forfeitures incurred by virtue of the act entitled 'an act to regulate the collection of the duties imposed by law on goods, wares and merchandise, imported into the United States, and on the tonnage of ships or vessels,' may be sued for, prosecuted and recovered, and shall be appropriated in like manner."

There is no act in the statute book with such a title. The only act *then* in force regulating the collection of duties on goods imported, and on tonnage, was the act of August 4th, 1790, entitled "an act to provide more effectually for the collection of the duties imposed by law on goods, wares and merchandise, *imported into the United States, and on the tonnage of ships or vessels." By the 67th section of this act, it is enacted, "that all penalties accruing by any breach of this act shall be sued for, with costs of suit, in the name of the United States of America, in any court proper to try the same, and the trial of any fact which may be put in issue, shall be within the judicial district in which any such penalty shall have accrued; and the collector, within whose district the seizure shall be made, is hereby authorized and directed to cause suits for the same to be commenced and prosecuted to effect, and to receive, distribute and pay the sum or sums recovered, after first deducting all necessary costs and charges, according to law. And that all ships or vessels, goods, wares or merchandise, which shall become forfeited, by virtue of this act, shall be seized, libelled and prosecuted as aforesaid, in the proper court having cognisance thereof," &c. Here, the words "as aforesaid" refer to the trial of the fact in the judicial district where the forfeiture was incurred.

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This provision is also analogous to that contained in the 8th amendment of the constitution of the United States, which provides for the trial of all offences in the state and district where they were committed,

The property could not lawfully be seized out of the district of Vienna, unless by the collector of that port. But if the collector of Alexandria had a right to seize it, he ought to have sent it back to the district of Maryland for trial.

Congress need not have recited the title of the act to which they intended to refer, but having undertaken to do so, and not having recited it truly, it is as if no mode of trial had been provided; so *that there is no court competent to condemn the property.

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Rodney, Attorney-General of the United States, contrà.—The act referred to in the 35th section of the act of the 18th of February 1793, is the act of the 31st of July 1789, entitled "an act to regulate the collection of the duties imposed by law on the tonnage of ships or vessels, and on goods wares and merchandises imported into the United States." This act is not in the common edition of the laws, having been repealed by the act of the 4th August 1790; but it is found in Oswald's edit. of the Laws, vol. 1, p. 25. (1 U. S. Stat. 29.) The title contains precisely the same words with the title recited in the 35th section of the act of the 18th of February 1793. They are a little transposed, but the sense is the same. Whereas, the title of the act of the 4th August 1790, varies very essentially from the title recited. It is "an act to provide more effectually for the collection of the duties," &c.

It is no objection that the act of the 31st of July 1789, was repealed, before the act of the 18th of February 1793, was passed. It remained in the statute book, and answered every purpose of reference as to the mode of recovering forfeitures, as well as if it had remained in force as a law respecting the collection of duties. It was referred to merely to prevent the necessity of transcribing its provisions respecting a particular subject.

But even the act of the 4th of August 1790, § 67, does not require the trial of forfeitures to be in the district where the cause of forfeiture arose. It only declares, that in actions for penalties (not in suits for forfeitures), "the trial of any fact which may be put in issue, shall be within the judicial district in which such penalty shall have accrued." But when it speaks of forfeitures, it says the goods, &c., *"shall be seized, libelled and prosecuted as aforesaid, in the proper court having cognisance thereof;" [*308 which are precisely the same words with those contained in the 36th section of the act of the 31st of July 1789.

It was not necessary, by the common law, that prosecutions on penal laws should be in the counties where the offences were committed. 3 Inst. 194. And the stat. of 21 Jac. I., c. 4, making it necessary in general cases, does not apply to revenue cases (1 Anst. 220, 221). In such cases, when the proceedings are *in rem*, the place of seizure always designates the place of trial; and the thing must always be within the jurisdiction and power of the court where the trial is had, otherwise, it can neither enforce a sale, after condemnation, nor restore the goods, upon a decree of restitution. It is said, that the collector of Alexandria ought to have sent the goods back to the district of Maryland, for trial. But at whose risk and expense should they be transported? No provision is made by law for such a case. If he had sent the goods back to Maryland, and upon trial, they had been acquitted, would the government take the risk and expense of re-transportation to Alexandria? Nothing could be more unreasonable and inconvenient.

But if the act of the 18th of February 1793, refers neither to the act of July 31st, 1789, nor to that of the 4th of August 1790, there is no mode of prosecution particularly specified in the act of 1793, and the question of jurisdiction must be decided by the judiciary act of September 24th, 1789, the 9th section of which enacts, that the district courts of the United States shall have exclusive original cognisance of all seizures under the laws of impost, navigation or trade of the United States, where the seizures are

made on certain waters, or on land, within their respective districts, as well as upon the high seas.

*309] The collector of Alexandria not only had a *right, but it was made his duty to seize the goods under the 70th section of the collection law of 1799. (1 U. S. Stat. 678.) But whether the collector had a right to seize or not, the seizure having been made, it was the duty of the court to take cognisance of it.

March 15th, 1809. LIVINGSTON, J., delivered the opinion of the court, as follows, viz :—This is a seizure on land, by the collector of the port of Alexandria, for a breach of the act for enrolling and licensing ships or vessels to be employed in the coasting-trade and fisheries, and for regulating the same, passed 18th February 1793. The breach alleged is, that a certain schooner called the Sea Flower, duly enrolled and licensed, sailed to a foreign port, without having first given up her enrolment and license, and without being duly registered. That, on her return-voyage, there were imported in the said schooner, from the Havana into the port of Vienna, in the district of Maryland, certain goods, and thence transported to the town of Alexandria, in the district of Columbia, and within the collection district of Alexandria. The goods were condemned by the circuit court, and the only error relied on is, that there is no law authorizing a condemnation in a district different from that in which the forfeiture accrued.

The 35th section of the act under which the seizure was made, declares that all penalties incurred thereby, shall be sued for in the same manner as penalties incurred by virtue of an act entitled "an act to regulate the collection of the duties imposed by law on goods, wares and merchandises imported into the United States, and on the tonnage of ships or vessels." On examining the different acts of congress on this subject, there is none whose

*310] title exactly corresponds with the reference here made. It is contended *by the counsel for the United States, that the act here intended, although it does not bear, in terms, the same title, is the one regulating duties, which passed the 31st of July 1789, and that this does not render it necessary that the trial should be within the district where the forfeiture accrued; while the plaintiff insists that, as this act had been repealed several years prior to the passing of the law under which this seizure was made, it is more probable, that a reference was intended to another act, on the same subject, of the 4th of August 1790, which requires that the trial of any fact which may be put in issue shall be within the judicial district in which any penalty shall have accrued. It is not improbable, that this was the law intended; but as the title of neither corresponds with the one given in this act, the court thinks that the proceedings on forfeitures accruing under it, may well be governed by the 9th section of the act to establish the judicial courts of the United States, which confers on the district courts, jurisdiction of all seizures under laws of impost, navigation or trade of the United States, when the seizures are made on waters which are navigable from the sea, by vessels of ten or more tons burden, within their respective districts; and also of all seizures on land, or other waters, than as aforesaid made, and of all suits for penalties and forfeitures incurred under the laws of the United States. It is a fair construction of this section, taking the whole together, that nothing more is necessary to

give jurisdiction, in cases of this nature, than that the seizure should be within the district, without any regard to the place where the forfeiture accrued. It would, in many cases, be attended with much delay and injury, without any one advantage, were it necessary to send property for trial to a distant district, merely because the forfeiture had been incurred there. The court feels no disposition to impose these inconveniences on either of the parties, unless where it be positively directed by an act of congress. There being no provision of that kind in the law under which this forfeiture accrued, the court cannot perceive any error in the proceedings below; and *therefore, orders that the judgment of the circuit court be affirmed, with costs. [*311

United States *v.* Riddle.

Frauds on the revenue.—Probable cause.

The law punishes the attempt, not the intention, to defraud the revenue by false invoices.
A doubt concerning the construction of a law may be good ground for seizure, and authorize a certificate of probable cause.[1]

Error to the Circuit Court of the district of Columbia, which had affirmed the sentence of the district court, restoring certain cases of merchandise which had been seized by the collector of Alexandria, under the 66th section of the collection law of 1799 (1 U. S. Stat. 677), because the goods were not "invoiced according to the actual cost thereof, at the place of exportation," with design to evade part of the duties.

The goods were consigned by a merchant of Liverpool, in England, to Mr. Riddle, at Alexandria, for sale, accompanied by two invoices, one charging them at 67*l.* 5*s.* 6*d.*, the other at 132*l.* 14*s.* 9*d.*, with directions to enter them by the small invoice, and sell them by the larger. Mr. Riddle delivered both invoices and all the letters and papers to the collector, and offered to enter the goods in such manner as he should direct. The collector informed him that he must enter them by the larger invoice, which he did. But the collector seized them as forfeited under the 66th section of the collection law of 1799, which enacts, "that if any goods, wares or merchandise, of which entry shall have been made in the office of a collector, shall not be invoiced according to the actual cost thereof at the place of exportation, with design to evade the duties thereupon, or any part thereof, all such goods," &c., "shall be forfeited." The same section contains a provision for the appraisement of the goods by two merchants, in case the collector shall suspect that the goods are not invoiced at a sum equal to that at which they have been usually sold in the place from whence they were imported, with a proviso *that such appraisement should not, upon the trial, be conclusive evidence of the actual and real cost of the said goods at the place of exportation. [*312

Rodney, Attorney-General for the United States, contended, that as the goods were invoiced lower than their actual cost, with intent to defraud the revenue, they were not invoiced according to their actual cost, with the like intent; and the goods having been actually entered, although not by the

[1] Averill *v.* Smith, 17 Wall. 92; The Friendship, 1 Gallis. 111.