

EVANS v. BOLLEN.

Case No. 4,554.  
[4 Dall. 342.]

Circuit Court, D. Pennsylvania.

April Term, 1800.

JURISDICTION OF CIRCUIT COURTS—ACTION FOR PENALTY—SLAVE TRADE.

[An action was brought in the circuit court for the district of Pennsylvania to recover the penalty of \$2,000 for aiding and abetting in the fitting out of a vessel to be employed in the slave trade, contrary to section 2 of the act relating thereto. It was objected that the court had no original jurisdiction, because the suit was for a penalty or forfeiture, and was therefore within the exclusive cognizance of the district courts under the judiciary act; also that, as the offence was committed in New York, it ought to be tried there. *Held*, that the circuit court for the district of Pennsylvania had no jurisdiction.]

This was a qui tarn action, in which the following declaration was filed:

“October Session 1797. In the Circuit Court of the United States for the Pennsylvania District of the Middle Circuit District of Pennsylvania, ss. George Bollen, late of the district of Pennsylvania, yeoman, was summoned to answer to the United States and to John Evans, who sues in this behalf, as well for the said United States as for himself, of a plea that he render to the said United States, and to the said John who sues as aforesaid, the sum of two thousand dollars, which to them he owes, and from them unjustly detains: and whereupon the said John, who sues in this behalf, as well for the said United States, as for himself, by Joseph Thomas his attorney, saith that the said George, on the first day of April in the year of our Lord one thousand seven hundred and ninety-seven, at the port of New-York, to wit, at the district aforesaid, was aiding and abetting, in preparing and sending away from a port within the said United States, to wit, from the port of New-York, a certain vessel called the Betsey, intending that the same should be employed for the purpose of procuring from a foreign country, to wit, from the coast of Africa, the inhabitants of such foreign country, to be transported to a foreign country, to wit, to the island of Saint Croix, to be disposed of as slaves, against the form of the statute in such case made and provided; by means whereof, and by force of the statute in such case made and

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provided, an action hath accrued to the said John, who sues in this behalf, as well for the said United States, as for himself, to have and demand of and from the said George the said sum of two thousand dollars: yet the said George (although often requested) hath not paid the said two thousand dollars, or any part thereof, to the said John, who in this behalf sues for the United States as well as for himself, but the same to him to pay hath hitherto wholly refused, and still doth refuse, to the damage of the said John, who sues as aforesaid, five hundred dollars. And thereof he brings suit, &c. Pledges, &c. John Doe. Richard Roe.”

Joseph Thomas, for plaintiff.

The action was founded on the act of confess, “to prohibit the carrying on the slave trade, from the United States to any foreign place or country,” (volume 3, p. 22, Swift’s Ed. [1 Stat. 347]), of which the following were the material sections, in the discussion:

“Section 1. Be it enacted, &c. that no citizen or citizens of the United States, or foreigner, or any other person coming into, or residing within the same, shall, for himself or any other person whatsoever, either as master, factor, or owner, build, fit, equip, load, or otherwise prepare any ship or vessel, within any port or place of the said United States, nor shall cause any ship or vessel to sail from any port or place within the same, for the purpose of carrying on any trade or traffic in slaves, to any foreign country; or for the purpose of procuring, from any foreign kingdom, place, or country, the inhabitants of such kingdom, place, or country, to be transported to any foreign country, port, or place whatever, to be sold or disposed of, as slaves: and if any ship or vessel shall be so fitted out, as aforesaid, for the said purposes, or shall be caused to sail, so as aforesaid, every such ship or vessel, her tackel, furniture, apparel, and other appurtenances, shall be forfeited to the United States; and shall be liable to be seized, prosecuted, and condemned, in any of the circuit courts, or district court for the district, where the said ship or Vessel may be found and seized.

“Sec. 2. And be it further enacted, that all and every person, so building, fitting out, equipping, loading, or otherwise preparing, or sending away, any ship or vessel, knowing, or intending, that the same shall be employed in such trade or business, contrary to the true intent and meaning of this act, or any ways aiding or abetting therein, shall severally forfeit and pay the sum of two thousand dollars, one moiety thereof to the use of the United States, and the other moiety thereof to the use of him or her who shall sue for and prosecute the same.”

The facts were proved, as stated in the declaration, but the defendant’s counsel made two objections to the jurisdiction of the court: 1st. That this was a suit under the second section, and the circuit court could not take original cognizance of a case of penalty, or forfeiture, as the judicial act expressly declared, that the district court should have “exclusive original cognizance of all suits for forfeitures and penalties incurred under the laws of the

United States.” Vol. 1, pp. 53, 54, § 9 [1 Stat. 77]. 2d. That the offence was committed, in the state of New-York; and ought to be tried there, upon the principles of the common law, adopted by the constitution of the United States, and various acts of congress. Const art 3, § 2, vol. 1, p. 29, § 67 [1 Stat. 17]; Const. Amend, arts. 8, 9 [1 Stat. 21]; 4 Bl. Comm. 350; 3 Bl. Comm. 359, 360; **U. S. v. Insurgents** [Case No. 15,443].

It was agreed, that a verdict should be given for the plaintiff, subject to the opinion of the court on these points; and after argument by E. Tilghman, for the plaintiff, and Levy, for the defendant,

THE COURT declared, that they had no jurisdiction of the cause; and directed a non pros, to be entered.