14FED.CAS.—28

Case No. 7,743.

KETLAND v. THE CASSIUS.

[2 Dall. 365.][1]

Circuit Court, D. Pennsylvania. 1796.

COURTS—GROUNDS OF JURISDICTION—CIRCUIT COURT—QUI TAM ACTION.

The circuit court has not original jurisdiction of a proceeding for the forfeiture of a vessel for an offense.

[Cited in Anonymous, Case No. 444.]

An information that had been exhibited against the Cassius, as a vessel illegally outfitted within the jurisdiction of the United States,[2] 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 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.

Mr. Lewis, for the informant, contended, that the district court had not, and that this court

had, jurisdiction.—He referred to the 9th. 11 th, 21st and 22d sections of the judicial act [1 Stat. 76, 78, 83. 81); 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 cognizance of crimes and offences to that court; nor is it within the clause creating an exclusive original cognizance 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 cognizance 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 burthen, 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; it 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 ease in the present 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 cognizance of all crimes and offences, cognizable under the authority of the United States, except where the act otherwise provides, or the laws of the United States shall otherwise direct, and concurrent jurisdiction with the district courts of the crimes and offences cognizable therein." Unless, therefore, there is any law giving cognizance to the district court, this section gives it exclusively to the circuit court. But even if the district court has cognizance, 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.

Mr. 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; U. S. v. La Vengeance[3] {3 Dall. (3 U. S.) 297},—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.

Before WILSON, Circuit Justice, and PETERS, District Judge.

PETERS, District Judge. 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 U. S. v. Guinet {Case No. 15,270}, for being concerned in illegally fitting out a French privateer, the party was arrested, and some cannon and other articles were seized. I then, upon full consideration, directed that the information in rem, to inforce 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 jurisdiction given by the judicial act, and not upon any special jurisdiction created for that purpose.

"WILSON, Circuit 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 cognizance of any cause;—or, in terms less direct, if we are not satisfied, that we have cognizance; 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 encreases, indeed, with every moment's reflection upon the subject) is opposed to the alledged 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 cognizance of a proceeding merely in rem, cannot be considered as taking cognizance 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 cognizance 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 two different members of the very same section, that the district court shall have, "exclusively of the courts of the several states," cognizance of all crimes and offences, committed upon that high seas, &c. and of suits against consuls or 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 enquiry. "We think that it is a suit of that denomination; and, consequently, cannot take cognizance 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.

NOTE. Lewis doubted whether a writ of error would lie for want of parties, as the 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 resort 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] {Reported by A. J. Dallas, Esq.}

[2] See U. S. v. Peters {3 Dall. (3 U. S.) 121}.

[3] At the request of the court, I produced my notes of this case on the argument.

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