

Case No. 16,122.

UNITED STATES v. RAVARA.

{2 Dall. 297;<sup>1</sup> Whart. St. Tr. 90.}

Circuit Court, D. Pennsylvania.

April Term, 1793.

JURISDICTION OR SUPREME AND CIRCUIT COURTS—CRIMES BY FOREIGN CONSULS—CONSTITUTIONAL LAW.

{The provision of the constitution which vests in the supreme court “original jurisdiction” in all cases affecting ambassadors, other public ministers and consuls, does not make that jurisdiction exclusive; and therefore, by the provision of the judiciary act (1 Stat. 73), which vests in the circuit courts jurisdiction of all crimes and offences cognizable under the authority of the United States, the latter courts have jurisdiction to try an indictment against a foreign consul for offences committed in this country. Iredell, Circuit Justice, dissenting.}

{Cited in *Gittings v. Crawford*, Case No. 5,465; *U. S. v. New Bedford Bridge*, Id. 15,867; *Texas v. Lewis*, 14 Fed. 67.}

The defendant, a consul from Genoa, was indicted for a misdemeanor, in sending anonymous and threatening letters to Mr. Hammond, the British minister, Mr. Holland, a citizen of Philadelphia, and several other persons, with a view to extort money.

Before the defendant pleaded, his counsel (Heatly, Lewis & Dallas) moved to quash the indictment, contending that to the supreme court of the United States, belonged the exclusive cognizance of the case, on account of the defendant’s official character. By the second section of the third article of the constitution, it is expressly declared, that “in all cases affecting ambassadors, other public ministers, and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction.” By declaring in the sequel of the same section “that in all the other cases before mentioned the supreme court shall have appellate jurisdiction,” the word original is rendered tantamount to exclusive, in the specified cases. But surely an original jurisdiction established by the constitution in the supreme court, cannot be exclusively vested by law in any inferior courts. The thirteenth section of the judicial act provides, that “the supreme court shall have exclusively all such jurisdiction of suits or proceedings against ambassadors, or other public ministers, or their domestics, or domestic servants, as a court of law can have or exercise consistently with the law of nations; and original, but not exclusive, jurisdiction of all suits brought by ambassadors, or other public ministers, or in which a consul, or vice consul shall be a party.” This provision obviously respects civil suits; but the eleventh section declares, that “the circuit court shall have exclusive cognizance of all crimes and offences cognizable under the authority of the United States, except where this act otherwise provides, or the laws of the United

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States shall otherwise direct, and concurrent jurisdiction with the district courts of the crimes and offences cognizable therein." This is a criminal prosecution, not otherwise provided for; and if the jurisdiction can be exclusively vested in the circuit court, it destroys the original jurisdiction given by the constitution to the supreme court. In justice to the legislature, therefore, such a construction must be rejected; and the cognizance of the case be left, upon a constitutional footing, exclusively to the supreme court. The argument is the more cogent from a consideration of the respect which is due to consuls, by the law of nations. Vatt. Law Nat. bk. 2, c. 2, § 34.

Mr. Rawle, U. S. Dist. Atty., stated in reply, that there was a material distinction between public ministers, and consuls; the former being entitled to high diplomatic privileges, which the latter, by the law of nations, had no right to claim; and he contended, that the supreme court has original, but not exclusive, jurisdiction of offences committed by consuls; that the district court had jurisdiction (exclusively of the state courts) of all offences committed by consuls, except where the punishment to be inflicted exceeded thirty stripes, a fine of one hundred dollars, or the term of five months imprisonment; and that the circuit court had, in this respect, a concurrent jurisdiction with the supreme court as well as the district court. If indeed this is a crime "cognizable under the authority of the United States," it is within the express delegation of jurisdiction to the circuit court.

Before WILSON, and IREDELL, Circuit Justices, and PETERS, District Judge.

WILSON, Circuit Justice. I am of opinion, that although the constitution vests in the supreme court an original jurisdiction, in cases like the present, it does not preclude the legislature from exercising the power of vesting a concurrent jurisdiction, in such inferior courts, as might by law be established. And as the legislature has expressly declared, that the circuit court shall have "exclusive cognizance of all crimes and offences, cognizable under the authority of the United States," I think the indictment ought to be sustained.

IREDELL, Circuit Justice. I do not concur in this opinion, because it appears to me, that for obvious reasons of public policy, the constitution intended to vest an exclusive jurisdiction in the supreme court, upon all questions relating to the public agents of foreign nations. Besides, the context of the judiciary article of the constitution seems fairly to justify the interpretation, that the word "original," means "exclusive," jurisdiction.

PETERS, District Judge. As I agree in the opinion expressed by Judge WILSON, for the reasons which he has assigned, it is unnecessary to enter into any detail.

The motion for quashing the indictment was accordingly rejected, and the defendant pleaded not guilty; but his trial was postponed, by consent, till the next term.

{See Case No. 16,122a.}

<sup>1</sup> {Reported by A. J. Dallas, Esq.}