

Case No. 16,472. UNITED STATES V. THOMAS ET AL.
[Whart. St Tr. 682.]

Circuit Court, D. Pennsylvania.

1800.

POLICE POWERS—SEIZURE AND OPENING OF LETTERS CARRIED BY
MESSENGER.

In two indictments, one of which was returned ignoramus, and the other of which was never pressed, it was charged that defendants did “open and the contents thereof did promulgate and make known,” two letters addressed by Mr. Liston, the British minister in Philadelphia, to Mr. Russel, president of the British frontier in Upper Canada. The evidence on which the prosecution rested appears to have been that the defendants, who were shown to have acted under the sheriff of Bucks county, who was armed with a bench warrant, arrested a man named Isaac Livezey (who was charged with horse-stealing, but who turned out to be a messenger from Mr. Liston to Mr. Russel), and broke open his trunk, from which the letters mentioned in the indictment were taken. That the proceedings against Livezey were bona fide, afterwards amply appeared, the stolen horses being found in his custody; and under the belief that the searching of his trunks and opening of the letters was but an ordinary case of police power, as well as from doubts as to jurisdiction, the prosecution was not carried on.

This case is only here introduced in consequence of the public interest excited by the

publication of the letters which the defendants were charged with opening. They were as follows:

“Philadelphia, 6 May, 1799.

“Sir: The government of the United States appears to be nearly in the same situation with regard to the Shawenese Indians, that that of Canada is with respect to the Mohawks. The Shawenese wish the United States to make some alteration of their limits, as fixed by the treaty of Grenville; and at the same time to confirm the sales of lands they have already made, and authorize future alterations. The American ministers, on the other hand, are determined not to grant this favour, and are embarrassed by the persevering importunity of the Indians. Advices lately arrived from Port Wayne inform the administration that the Shawenese intend this spring to call a general council of the Nation (composed of representatives from several tribes), with a view to take such measures as may be thought best calculated to obtain some modifications of the Grenville treaty. And the information adds that this idea was first suggested by the late Colonel M’Kee, deputy superintendent of Indian affairs. The government considers this interference as unfriendly and injurious to their interests, and a complaint has been made to me on the subject by the secretary of state, with a request that I would make such representation of the matter to you as might produce a defeat of the project at present, and prevent all intervention of a similar nature in future. I informed the secretary of state that I could scarcely bring myself to credit the report respecting Colonel M’Kee; that, at all events, I could not conceive anything unfavourable to the United States could have been contemplated by a public officer in the service of Great Britain; but that I would of course make the representation requested; that I made no doubt of its having the desired effect, because I was confident that you were sincerely disposed to ward off every incident that could give just cause of misunderstanding between the two nations.

“The situation of public affairs in this country continues the same as at the date of my last letters, unless it be that the government has given a new subject of provocation to Prance, by encouraging, in conjunction with us, the negro chief Toussaint in measures which appear ultimately to tend to a separation of the Island of St Domingo from the mother country. Whether this affront will be pocketed by the directory, I do not pretend to decide; but I cannot persuade myself that it is probable. I have the honour to be, with great truth and respect, sir, your most obedient humble servant.

Robert Liston.”

“The Hon. President Russel—Sir: My last having been entrusted to a person who was not going directly to Upper Canada, I am uncertain whether it may yet have reached your hands, and therefore, take an opportunity of transmitting a duplicate. On public affairs I have scarcely anything to add. One step farther on the road to a formal war between Prance and the United States has been taken by the governor of Guadaloupe, who, in

consequence of the capture of the insurgent frigate, has authorized French ships of war to capture all American vessels, whether belonging to the government or to individuals. But the resolution of the directory on the great question of peace or war is not yet known. Perhaps the new explosion of the continent of Europe may give them a degree of employment that may retard their decision. In the interior of this country, the declamations of the Democratic faction, on the constitutionality and nullity of certain acts of the legislature, have misled a number of poor ignorant wretches into a resistance of the laws, and a formal insurrection. This frivolous rebellion has been quelled by a spirited effort of certain volunteer corps lately embodied, who deserve every degree of praise. But the conduct of these gentlemen having been shamefully calumniated by some of the popular newspapers, they have ventured to take the law into their own hands, and punish one or two of the printers by a smart flogging; a circumstance which has given rise to much animosity, to threats, and to a commencement of armed associations, on the side of the Democrats (particularly the united Irishmen), and some apprehend that the affair may lead to a partial civil war. The portion, however, of the Jacobinic party, who could carry matters to this extremity, is but small; the government is on its guard, and determined to act with vigour; and I do not, on the whole, apprehend any serious danger. I have the honour to be, with great truth and respect, sir, your most obedient humble servant.

Robert Liston.”

The allegation in the first of these letters that the American government had co-operated with the British in setting on Toussaint to revolt against the mother country, was calculated to embitter against the administration not only the favourers of a French alliance, but the Southern states generally. The federal papers denied the charge, but it continued to be reiterated by the opposition with much effect until the election. It is due to the administration, however, to say that no corroboration was ever found of Mr. Liston's statement; and that it may now be looked upon as arising from either diplomatic gasconade or personal misapprehension.